

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. ~~72~~ 36

CHEW HING LUNG & COMPANY, PETITIONERS,

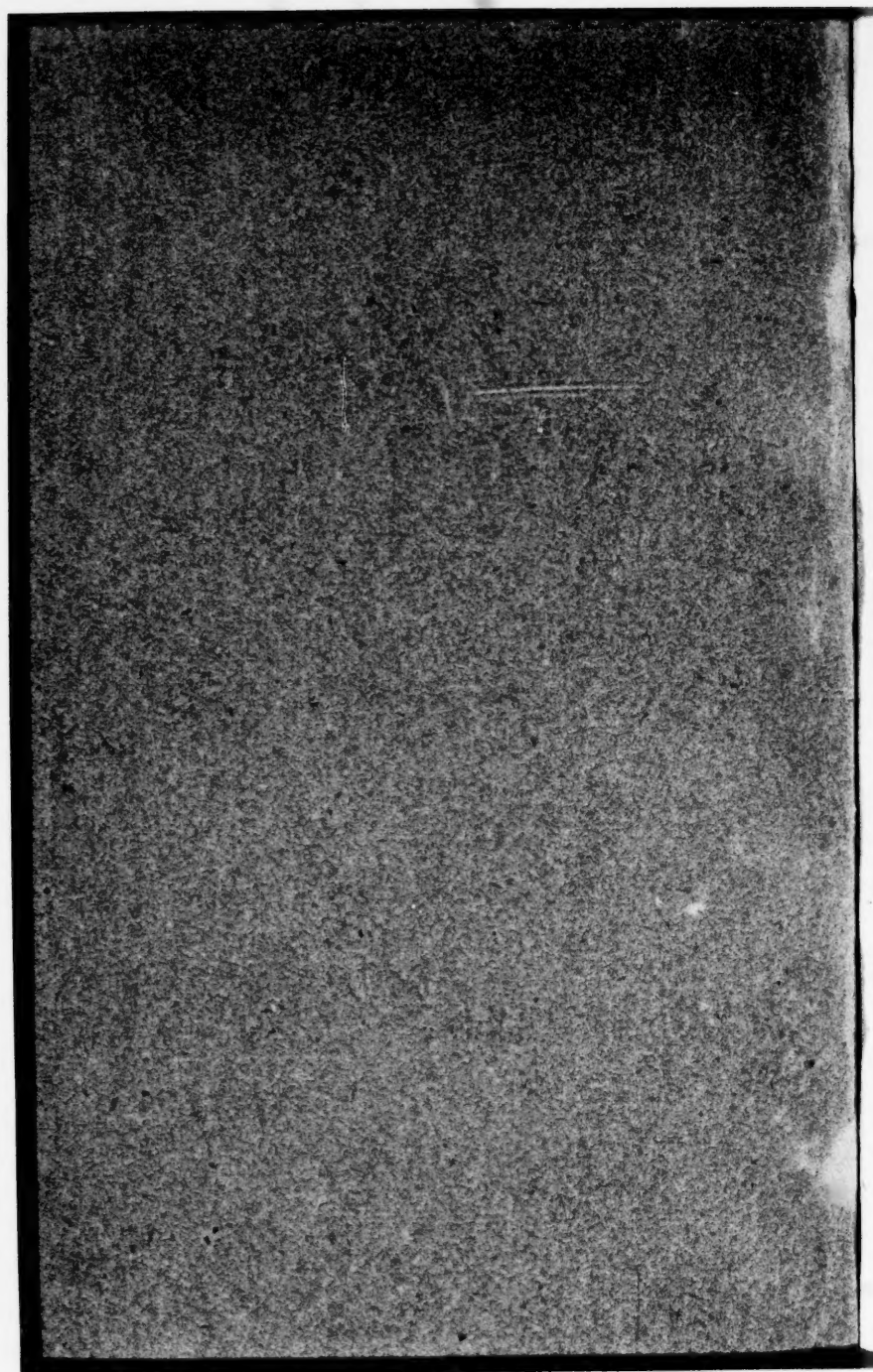
vs.

JOHN H. WISE, COLLECTOR OF CUSTOMS FOR THE
PORT OF SAN FRANCISCO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 2, 1909.
CERTIORARI AND RETURN FILED JANUARY 12, 1910.

(16,737.)



(16,737.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 202.

CHEW HING LUNG & COMPANY, PETITIONERS,

vs.

JOHN H. WISE, COLLECTOR OF CUSTOMS FOR THE
PORT OF SAN FRANCISCO.

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OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Transcript from the circuit court of the United States for the north- ern district of California		
Petition	1	1
Order on United States general appraisers to make return	1	1
Order on United States general appraisers to make return	5	3
Marshal's return of service	7	4
Return of the board of United States general appraisers	8	5
Exhibit A—Letter of John H. Wise, collector, to appraisers, December 22, 1893	9	6
B—Protest of Chew Hing Lung, November 29, 1893	9	6
C—Letter of James E. Tucker, appraiser, to John H. Wise, collector, December 20, 1893	11	7
D—Letter of J. R. Foy, assistant appraiser, to Walter H. Bunn, appraiser, March 17, 1894.	12	8
Chemist's report	12	8
F—Opinion by Wilkinson, G. A.	13	8
Findings of the court	15	10
Judgment	16	11
Certificate to judgment-roll	20	13
Opinion	21	13
	22	14

	Original.	Print.
Bill of exceptions	25	16
Stipulation as to facts, &c.	26	16
Stipulation as to evidence	28	18
Testimony of Thomas Henry Brown.....	30	19
G. P. Lauinger	36	23
Edward A. Keil.....	44	30
M. F. Loewenstein	51	35
J. J. Schute	60	41
A. L. Wisner.....	63	44
J. A. Sampson	69	48
Dr. Chas. A. Kern	75	52
Thomas Price.....	87	60
Charles C. Leavitt.....	105	71
Henry Gray	110	75
Charles Williams.....	112	76
Pliny Bartlett	114	77
J. A. Doherty	118	80
Louis Saroni	123	83
Hugo D. Keil	125	85
P. F. Ferguson	133	91
H. H. White	138	94
W. Frese	141	96
Frank H. Ames	146	100
Henry J. Hanks	151	103
H. A. Kurlfinke	155	106
Eugene J. Bates	159	109
M. J. Brandenstein.....	174	119
J. E. Miles	182	124
Louis Falkenau	186	127
Everitt D. Jones	215	147
W. E. Cumback.....	220	151
Wm. Ireland.....	225	154
W. Tappenbeck	231	158
R. H. Swayne	238	164
Louis Falkenau (recalled).....	246	169
Referee's report	248	170
Stipulation as to bill of exceptions.	250	171
Judge's certificate to bill of exceptions.	251	171
Petition for appeal.....	251	172
Order allowing appeal.....	252	172
Assignment of errors.....	253	172
Order allowing withdrawal of exhibits	255	174
Clerk's certificate to transcript.....	256	174
Citation and service.....	257	175
Opinion (Ross, justice).....	259	176
Judgment	270	181
Clerk's certificate.....	271	182
Writ of certiorari.....	272	182
Stipulation as to return to certiorari	275	183
Return to writ of certiorari.....	277	184

a

Original.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of the Application of JOHN H. WISE, Collector, etc., Petitioner and Appellant, } No. 362.

vs.
CHEW HING LUNG & Co., Respondent and Appellee. }

Transcript of Record.

Upon appeal from the circuit court of the United States, ninth judicial circuit, in and for the northern district of California.

1 UNITED STATES OF AMERICA :

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

The petition and application of John H. Wise, Esq., collector of customs for the port of San Francisco, State of California, for a review under an act of Congress approved June 10, 1890, entitled "An act to simplify the laws in relation to the collection of revenues," of the questions of law and fact involved in a decision of the board of general appraisers on duty at the port of New York, in the matter of the classification of certain flour merchandise imported by Chew Hing Lung & Co.

Petition.

To the honorable the circuit court of the United States, ninth circuit, in and for the northern district of California :

The petition and application of John H. Wise respectfully shows :

That your petitioner is, and at the several times hereinafter mentioned was, collector of customs for the port of San Francisco, State of California.

That Chew Hing Lung & Co., hereinafter mentioned, at the several times hereinafter referred to were and are a partnership, doing business as merchants and importers of foreign merchandise in the city and county of San Francisco, State of California, under the firm name of Chew Hing Lung & Co.

That on or about the 2d day of November, A. D. 1893, the said Chew Hing Lung & Co. imported into the United States, to wit, at the port of San Francisco, California, from Hong Kong, a port or place in the empire of China, certain merchandise, invoiced as "sago flour," by the vessel known as the bark "Cimbria," which said merchandise purports to be more fully described in and by the inward foreign entry thereafter made thereof at the custom-house at the said port of San Francisco, California, and numbered 6075, the said merchandise being more fully described as the merchandise subject to entry number 6075, and protest number 3475 of the official

serial numbers of said custom-house, and subject to decision number 21803 B of the official serial numbers of the board of United States general appraisers on duty at New York, State of New York, and being further described and identified as "S. O. L. 51-48 boxes sago flour" upon the custom-house record invoices relating to said merchandise.

That on the 16th day of Nov., A. D. 1893, James E. Tucker, the duly qualified and acting United States appraiser, upon the entry of the said merchandise, and upon and after an examination thereof, classified the same for duty as starch, dutiable at two (2) cents per pound, under the act of Congress, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890, and reported such classification to the said collector of customs for said port.

That thereafter, to wit, on the 23 day of November, A. D. 1893, said entry was liquidated by your petitioner, as such collector, upon the classification and at the rate of duty hereinbefore set forth; and said duty upon said merchandise amounting to the sum of — dollars was ascertained, levied, and collected by said collector, your petitioner, and the full amount thereof, together with all charges ascertained to be due upon said merchandise, was paid by said Chew Hing Lung Co. to said collector, your petitioner, on the 7th day of Nov., A. D. 1893.

That within ten days after such ascertainment, liquidation, and payment of said duties, to wit, on the 2d day of Dec., A. D. 1893, the said Chew Hing Lung Co. being dissatisfied with said classification, ascertainment, and liquidation, and the decision of the said collector, your petitioner, in the premises, gave notice to the said collector, your petitioner, in writing, of such dissatisfaction, which written notice distinctly and specifically set forth the reasons for the objections of said importers thereto, as follows, that said flour is not properly dutiable under paragraph 323 of the act hereinbefore referred to as claimed by said collector, your petitioner, but is entitled to free entry as tapioca, under paragraph 730 of said act, or as sago flour, under paragraph 695 of said act, or at one-quarter of one cent per pound, as rice flour, under paragraph 261 of said act, or at 20 per cent. ad valorem under section 4 of said act of October 1, 1890.

That thereafter, in due and proper time, your petitioner permitted all the papers and exhibits on which said entry was made, or connected therewith, to the board of the United States general appraisers, then on duty at the port of New York, State of New York, United States of America; and thereafter, on the 15th day of October, A. D. 1894, said board of United States general appraisers, to wit, Wilbur F. Lunt, J. B. Wilkinson, Jr., and Thad. S. Sharretts, made and rendered their decision in said matter in favor of the said protest, and against the said classification, ascertainment and decision made and rendered, and duty levied and exacted as aforesaid.

4 And your petitioner avers that as such collector he is dissatisfied with the decision of said board of general appraisers

as to the construction of the law respecting the classification of the said merchandise and the duty imposed thereon.

Wherefore your petitioner, as such collector, now applies to this honorable court for a review of the questions of law and fact involved in said decision of said board of general appraisers.

And in respect to said entry and the said payment your petitioner specifies as the reasons for his objections thereto as follows, to wit:

That the said board of general appraisers erred in finding as a fact that none of the said merchandise was and is fit for use as starch; and erred in concluding, holding, and deciding that the said merchandise was root flour dutiable at 20 per cent. ad valorem; and erred in not finding as a fact that said merchandise was and is starch, or a preparation fit for use as starch; and in not holding and concluding that it was and is dutiable at two cents per pound.

And your petitioner further prays this honorable court for an order that the said board of general appraisers do return to this court the record and evidence taken by them, together with a certified statement of the facts involved in said case, and their decision thereon, and that upon said record and evidence and such further evidence as may be taken herein, the court proceed to hear and determine the questions of law and fact involved in said decision respecting the classification of said merchandise and the rate of duty imposed thereon under said classification, and that upon such determination said decision of the said board of general appraisers be

reversed and set aside, and that it be adjudged that the said
5 merchandise was and is starch, or a preparation fit for use as such, dutiable at two (2) cents per pound; and that said liquidation, levy and exaction made by your petitioner, at the rate of two (2) cents per pound, be ordered to continue in full force and effect and that the same be enforced; that petitioner have his costs herein, and that this honorable court afford such other and further relief to petitioner as may be right and just in the premises.

JOHN H. WISE,

Collector of Customs of the Port of San Francisco.

CHAS. A. GARTER,

United States Attorney and Attorney for Petitioner.

(Endorsed :) Filed October 29th, 1894. W. J. Costigan, clerk.

THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

In the Matter of the Petition of JOHN H. WISE, Collector, for Review of Decision of U. S. General Appraisers Relative to Certain Flour Merchandise Imported by Chew Hing Lung & Co.

Order of Court.

Whereas, John H. Wise, collector of the port of San Francisco, California, has applied to this court to review the questions of law

and fact involved in the decision of the U. S. general appraisers on duty at the port of New York, State of New York, made and rendered by said U. S. general appraisers on the 15th day of October,

A. D. 1894, classifying as starch certain merchandise imported into the United States at the port of San Francisco, California, and entered at the custom-house at San Francisco, California, the said merchandise being more fully described as sago flour, being the merchandise subject to entry number 6075 and protest number 3475 of the official serial numbers of said custom-house, and also subject to said decision number 21803 B of the official serial numbers of the said U. S. general appraisers, to which said numbers reference is here made, and being further identified as "S. O. L. 51-48 boxes sago flour" upon the custom-house record invoice relating to said merchandise.

And, whereas, the said John H. Wise, as collector, has duly filed his application and petition for a review of said decision, and praying among other things that the said U. S. general appraisers be ordered to return to this court the records and evidence taken by them in the said cases, together with a certified statement of the facts involved in the cases, and their decisions thereon.

Now, therefore, in consideration of the premises it is hereby ordered that the three U. S. general appraisers on duty at the port of New York, State of New York, do, with all convenient speed, return to this court the record of said matters and the evidence taken by them therein, together with a certified statement of the facts involved in the case, and their decision thereon.

And it is further ordered that this order be entered upon the minutes of this court and served on each member of the said board of three general appraisers, by delivering to them a certified copy thereof.

JOSEPH MCKENNA, *Judge*.

(Endorsed :) Filed and entered Oct. 31, 1894. W. J. Costigan, clerk.

7 UNITED STATES OF AMERICA :

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

In the Matter of the Petition of JOHN H. WISE, Collector, for Review of Decision of U. S. General Appraisers Relative to Certain Flour Merchandise Imported by Chew Hing Lung & Co.

Order of Court, with Return of Service on Board.

Whereas, John H. Wise, collector of the port of San Francisco, California, has applied to this court to review the questions of law and fact involved in the decision of the U. S. general appraisers on duty at the port of New York, State of New York, made and rendered by said U. S. general appraisers on the 15th day of October, A. D. 1894, classifying as starch certain merchandise imported into the United States at the port of San Francisco, California, and en-

tered at the custom-house at San Francisco, California, the said merchandise being more fully described as sago flour, being the merchandise subject to entry number 6075 and protest number 3475 of the official serial numbers of said custom-house and also subject to said decision number 21803 B of the official number of said U. S. general appraisers, to which said numbers reference is here made, and being further identified as "S. O. L. 51-48 boxes sago flour" upon the custom-house record invoice relating to said merchandise.

And, whereas, the said John H. Wise, as collector, has duly filed his application and petition for a review of said decision, and praying among other things, that the said U. S. general appraisers
8 be ordered to return to this court the records and evidence taken by them in the said cases, together with a certified statement of the facts involved in the cases, and their decisions thereon.

Now, therefore, in consideration of the premises, it is hereby ordered that the three U. S. general appraisers on duty at the port of New York, State of New York, do, with all convenient speed, return to this court the record of said matters, and the evidence taken by them therein, together with a certified statement of the facts involved in the case, and their decision thereon.

And it is further ordered that this order be entered upon the minutes of this court and served on each member of the said board of three general appraisers, by delivering to them a certified copy thereof.

JOSEPH McKENNA, *Judge.*

(Endorsed:) Filed and entered Oct. 31, 1894. W. J. Costigan, clerk.

I, W. J. Costigan, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the following to be a full, true, and correct copy of an original order made, filed, and entered on the 31st day of October, A. D. 1894, as the same appears of record in said court in the above-entitled matter.

Attest my hand and the seal of said circuit court, this 31st day of October, A. D. 1894.

[SEAL.]

W. J. COSTIGAN, *Clerk.*

(Endorsed:) I hereby certify that at the city of New York, in my district, I personally served the within order upon the U. S. general appraisers herein referred to, by exhibiting to each of them at the time of said service the within original, and at the same time delivering to and leaving with each of them a certified copy thereof, as follows, to wit: Wilbur F. Lunt on the 22nd day of November, 1894, and Joseph B. Wilkinson, Jr., and Thaddeus S. Sharretts on the 4th day of December, 1894. Dated New York, Dec. 10, 1894. John H. McCarty, U. S. marshal, southern district of New York. Returned and filed January 15, 1895. W. J. Costigan, clerk, by W. B. Beazley, dep. clk.

In the Circuit Court of the United States for the Northern District of California, Ninth Judicial Circuit.

In the Matter of the Application of THE COLLECTOR OF CUSTOMS AT SAN FRANCISCO for a Review of the Decision of the Board of General Appraisers as to the Rate, etc., of Duty on Certain Merchandise Imported by Chew Hing Lung & Co., per the Vessel "Cimbria," Nov. 4, 1893. Suit No. 1233.

J. P. LAKE, [SEAL.]

Chief Clerk, Board of U. S. General Appraisers.

Return of the board of United States general appraisers to the order of Hon. Joseph McKenna, judge. Dated New York, March 8th, 1895.

Return of the Board of United States General Appraisers.

The board of United States general appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that a letter (copy of which is hereto annexed marked Exhibit "A") was received from the collector of customs at San Francisco, submitting under the provisions of section 14 of the act of June 10, 1890, the protest (marked Exhibit "B") described as follows:

Coll.'s No.	Board No.	Protestants.	Vessel.	Dt. entry.
3475	21803-B	Chew, Hing Lung & Co.	Cimbria.	Nov. 4, 1893.

10 That accompanying the letter of the collector aforesaid was a report from the appraiser at San Francisco, describing the merchandise subject of said protest 21803-B, a copy of which report is hereto annexed marked Exhibit "C."

There is also returned herewith, as Exhibit "D," a letter from the appraiser at the port of New York, transmitting a report from the official chemist upon the merchandise in question. The sample transmitted herewith is referred to therein as "Chew Hing Lung, root flour, inv. No. 6075," and is the same considered by the board in their decision herein, and said sample is marked Exhibit "E."

That on the 15th day of October, 1894, the board of general appraisers rendered its decision in the matter of said protest 21803-B, a copy of which decision is hereto annexed marked Exhibit "F."

EXHIBIT "A."

CUSTOM-HOUSE, SAN FRANCISCO, Dec. 22, '93.

I submit herewith the protests described below with the accompanying invoices against my assessment of duty at the rate of two cents per pound on certain Chinese root flour, claimed to be not

dutiable for use as starch returned by the appraiser as suitable and fit for use as starch, and assessed with duty under par. 323, act of Oct. 1, 1890, in accordance with rulings S. S. 10277, 10613, 13692, and 13775. The requirements of section 14, act of June 10, 1890, have been complied with by the protesters. * * *

(S'd)

JOHN H. WISE,
Collector of Customs.

SCHEDULE.

6075. Chew Hing Lung & Co., Cimbria, Nov. 4, 1893.

11

EXHIBIT "B."

Protest.

SAN FRANCISCO, Nov. 29, 1893.

To the collector of customs, district and port of San Francisco.

SIR: We hereby protest against the liquidation of our entry, and the assessment and payment of duties as exacted by you on certain flour, classified by you as starch at 2c. per pound, marks and numbers said to be —, but this protest is intended to cover and apply to all the goods of the same kind and character mentioned in the invoice or entry, whether specifically mentioned herein or not.

Said merchandise was imported by us on the 2d day of Nov., 1893, in the Dan. b'k "Cimbria" from Hong Kong, and is more fully described in dep. entry No. 6075.

The grounds of our objections are that said flour is not properly dutiable under paragraph 323 as claimed by you, but is entitled to free entry as tapioca, under paragraph 730, or as sago flour, under paragraph 695, or at one-quarter of one cent per pound as rice flour under paragraph 261, or at 20% ad valorem under section 4, act of October 1, 1890.

We pay the amount exacted solely to obtain possession of the goods, and claim that the entry should be readjusted, and the amount overcharged refunded to us.

We also give notice that we intend the duplicate protest, herewith submitted for transmission by you to the board of general appraisers, under the rules of your office, to be, as well, an appeal to the Secretary of the Treasury from your decision.

Yours respectfully,

CHEW HING LUNG,
No. 930 Dupt. St.

12

(Endorsed:) Entry No. 6075. Bond No. —. Protest. San Francisco, Nov. 29, 1893. Messrs. Chew Hing Lung & Co. against liquidation of entry, assessment and exaction of duty at the rate of 2c. per pound on flour. Vessel "Cimbria," from Hong Kong. Date of arrival, Nov. 2, 1893. Date of entry, Nov. 4, 1893. Date of liquidation, Nov. 23, 1893. Adjuster's office, custom-house, S. F., Cal. Received Dec. 2, 1893. W. 36923 Po.

EXHIBIT "C."

APPRAISER'S OFFICE, *December 20th, 1893.*

Hon. John H. Wise, collector of customs.

SIR: Referring to the protests of Lun Chong & Co., invoice 6424, Ying Yong Kee, invoice 6090, Chew Hing Lung & Co., invoice 6075, You Yuen, invoice 6188, Tuck On Lung & Co., invoice 6179, and Sam Sing, invoice 6199, against the return of certain flour, I beg leave to state that all of the flour in question was found by the special examiner of drugs to be suitable for use as starch, and in view of S. S. 10613 and 13692, the same was correctly returned as starch under par. 323, N. T.

Respectfully yours,
(S'd)

JAMES E. TUCKER, *Appraiser.*

Ex'd: H. G.

EXHIBIT "D."

PORT OF NEW YORK, APPRAISER'S OFFICE,
402 WASHINGTON STREET, *March 17th, 1894.*

Walter H. Bunn., Esq., U. S. appraiser.

SIR: Referring to a communication No. 21803 8-B addressed to you the 14th inst. by the Hon. Geo. C. Tichenor, president of the board of U. S. general appraisers, requesting information as to the commercial nature of certain six samples of flour forwarded 13 therewith, I would report as follows: The samples in question were submitted to U. S. Chemist Baker for analysis and his report on the same is forwarded herewith. The merchandise in question is known commercially as "tapioca flour" and it is similar to that the subject of S. S. No. 14114.

The papers and samples are returned herewith.

Very respectfully,

J. R. FOY,
Ass't Appraiser, 10th Div.

(Endorsed:) Geo. H. Sharpe, port of New York, N. Y., appraiser's office, M'ch 17, 1894. J. R. Foy, ass't appraiser. Subject: Tapioca flour. U. S. app'r, San Francisco. Respectfully forwarded to the board of U. S. gen'l appraisers, N. Y. city. Approver, Walter H. Bunn, appraiser. No. of inclosures, pkge. sample. Received by board of U. S. general appraisers Mar. 19, 1894.

PORT OF NEW YORK,
APPRAISER'S OFFICE, *Mar. 16th, 1894.*

Dr. Edward Sherer, chemist in charge, U. S. laboratory.

SIR: Referring to the communication "No. 21803 8-B," of the Hon. Geo. C. Tichenor, pres't board of U. S. gen. apprs., dated Mar. 14, 1894, accompanying six (6) samples of "flour," marked respectively—

{ " 21803 B
 Chew Hing Lung
 Root flour
 Inv. No. 6075
 { " 21806 B
 Y Y No. 30
 Root flour
 Inv. No. 6488 }

{ " 21804 B
 Yung Yuen Kee
 Root flour
 Inv. No. 6090
 { " 21805 B
 [TOL]
 Root flour
 Inv. No. 6179 }

14

{ " 21807 B
 S S K No. 1
 Root flour
 No. 6199 }

and

{ " 21808 B
 Lun Chong & Co.
 Root flour
 Inv. No. 6424 }

and requesting that determinations, as to "whether the article is tapioca, or sago, or rice flour," be made, I have to state that each sample consists of tapioca starch.

The article known to commerce as tapioca is the same material in flakes, which flakes have been especially prepared for culinary purposes, while the merchandise represented by the samples is in the form of flour adapted to use as starch.

It is precisely like the merchandise which was the subject of decision by the U. S. appellate court, but in that case the court had no commercial evidence before it that the preponderant use of the article was its employment as starch.

In the case referred to, the court was misled through the insufficiency of testimony.

According to Lawyer S. N. Phelps, of the National Starch Co., No. 29 Broadway, N. Y. city, the merchandise which the samples herein referred to represent is chiefly used for laundry purposes, and he says he could have delayed the court with testimony to that effect, had he been in New York at the time (when the hearings occurred, he was in Australia).

Mr. Phelps is the gentleman who induced Congress to insert the phrase "from whatever substance produced, fit for use as starch," into the act of Oct. 1st, 1890.

The testimony at the hearings in the case referred to showed that the tapioca of commerce had become "unfit for use as starch by reason of the treatment it had been subjected to, while the article under consideration was fit for use as starch," and was so used, but, unfortunately, the witness could only testify to the practice in other countries.

15 Since Mr. Phelps is positive he could overwhelm a court with testimony that it was and is so used in this country, I have to request that this communication be forwarded to Col. Tichenor, to the end that he may proceed to acquire the kind of information which his letter implies that he is seeking for.

Resp^dfully submitted.

HAYDN M. BAKER, *Chemist.*

Approved: EDWARD SHERER,

Chemist in Charge.

EXHIBIT "F."

(Not for publication.)

In the Matter of the Protests 21803-B., 3475, etc., of CHEW HING LUNG ET AL. against the Decision of the Collector of Customs of San Francisco as to the Rate and Amount of Duties Chargeable on Certain Sago Flour, etc., Imported per the Vessels and at the Dates Specified on the Schedule Annexed.

Before the U. S. general appraisers at New York, Oct. 15, 1894.

Opinion by WILKINSON, G. A.:

We find that the merchandise covered by entries Nos. 6075 and 6179 is sago flour, and sustain the claim that it is exempt from duty under paragraph 695, act of October 1st, 1890.

That the merchandise covered by entries Nos. 6188 and 6199 is root flour, and sustain the claim that it is dutiable at 20 % under section 4, act of October 1st, 1890. The merchandise covered by entry No. 6090 is also root flour such as we have held to be dutiable under section 4 at 20 %. Inasmuch as the appellants have not made the proper claim in their protest, the protest is overruled relative to this portion of the merchandise.

16 The merchandise covered by entry No. 6424 is arrow root. The importers having failed to claim under paragraph 488, the protest as to the arrow root is overruled.

(S'd)

WILBUR F. LUNT,
J. B. WILKINSON, JR.,
Board of U. S. General Appraisers.

SCHEDULE.

21803-B/3475. Chew Hing Lung & Co. Cimbria. Nov. 4, 1893.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said board than such as are shown by said decision and other exhibits hereto attached.

WILBUR F. LUNT,
J. B. WILKINSON, JR.,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

(Endorsed:) Return of the board of U. S. general appraisers. Filed March 14, 1895. W. J. Costigan, clerk, by W. B. Beaizley, dep. clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for a Review of Decisions of U. S. General Appraisers Relative to Certain Merchandise Imported. Case No. 11961.

Findings of the Court.

17 The above cause having regularly come up before the court on appeal from the board of United States appraisers, and due consideration having been had, the court now makes and files its findings of fact as follows :

I.

The merchandise in question, though entered at the custom-house at San Francisco, by the importers herein under various names, such as tapioca, sago, root flour, is all the same substance, viz., the starch grains contained in and derived from the root botanically known as *jatropha manihot*. In the West Indies the root is known as cassava or manioc; in Brazil as mandioc. All these names indicate the same thing without change of condition or character.

II.

The manihot, cassava, manioc or mandioc, is a shrub. There are at least two varieties of this root. The root of the sweet cassava may be eaten with impunity; that of the bitter, which is most extensively cultivated, abounds in an acrid milky juice, which renders it highly poisonous if eaten in the recent state. Both varieties contain a large proportion of starch.

III.

The starchy substance, constituting the importations involved in this controversy, consists of the starch grains obtained from the manihot root by washing, scraping, and grating or disintegrating it into a pulp, which, in the bitter variety, is submitted to pressure so as to separate therefrom the deleterious juices. The starch grains settle, and the juice is subsequently decanted, leaving as a deposit a powder, which, after repeated washings with cold water, and after being dried, is nearly pure starch and is insoluble in cold water. This is the substance in controversy. If sufficient heat and motion are afterwards applied to this substance, a mechanical change takes place, the grains become fractured and thereby agglutinated. This later substance is partly soluble in cold water and is granulated tapioca, known as pearl and flake tapioca in commerce.

IV.

The importations in question were from China, made between November 2, 1893, and June 6, 1894, and were made chiefly for the

purpose of supplying Chinese laundrymen, who use it as starch, and to a slight extent also for food purposes. Its use for such purposes is, however, limited to the Chinese, except that in some instances in San Francisco this substance is used for starch purposes in their business by white laundrymen, by mixing with wheat or corn starch. Wheat and corn and potato starch are the starches commonly used in the United States. The substance in question is not imported into San Francisco by others than Chinese.

V.

Among the white people dealing with the Chinese on the Pacific coast, the substance in question is commonly known as "Chinese starch." In the general importing markets of the United States it is commercially known as "tapioca flour." In those markets the term "tapioca" includes that article in three forms, viz., flake tapioca, pearl tapioca, and tapioca flour.

VI.

At the time of the importations in controversy, when the duty of two cents a pound was imposed, and since that time, the cost of the article in question has been substantially as great as that of ordinary starches, a little more than that of the cheapest and a little less than that of the best starches. Previous to the imposition of the 19 duty, and when it was admitted free of duty, its cost was less by the amount of the duty than it was at the time of the importations in question.

VII.

The substance in controversy is imported from China and used in the Eastern States for starch purposes by calico printers and carpet manufacturers to thicken colors, for book-binding, in the manufacture of paper, filling in painting, manufacture of a substitute for gum arabic and other gums, also as an adulterant in the manufacture of candy in some cases, and other articles.

VIII.

The article in question is fit for use as starch in laundry work, in the sense that by its use clothes can be starched, but it is not commonly used in such work as starch throughout the United States, and is not known to be so used except on the Pacific coast, as hereinbefore stated.

Upon the foregoing facts, I find, as a matter of law, that the imported article is properly classified under the head of tapioca, and that the decision of the board of general appraisers that it is free of duty should be sustained.

It is ordered that judgment be entered accordingly.
January 11, 1897.

JOSEPH McKENNA,
Circuit Judge.

(Endorsed:) Filed Jan'y 11th, 1897. W. J. Costigan, clerk.

20 UNITED STATES OF AMERICA :

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for Review of Decision of U. S. General Appraisers Relative to Certain Merchandise Imported. No. 11961.

Judgment on Findings.

This matter came on regularly for hearing, the parties appearing by their attorneys, Samuel Knight, Esq., assistant U. S. attorney, appeared on behalf of the petitioner and Messrs. Page, McCutchen & Eells, appeared on the part of the importers, Chew Hing Lung & Co. The matter was tried before the court upon the pleadings, proofs and argument of counsel, duly heard and considered, and the court having found the facts and the conclusions of law therefrom, filed the same, and ordered that judgment be entered in accordance therewith.

Wherefore, by virtue of the law and the findings aforesaid it is ordered, adjudged, and decreed that the imported article named in the petition herein is properly classified under the head of tapioca, and that the decision of the board of general appraisers that it is free of duty be and is hereby sustained.

Entered January 11th, A. D. 1897.

W. J. COSTIGAN, *Clerk.*

A true copy.

Attest:

[SEAL]

W. J. COSTIGAN, *Clerk.*

21 In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for Review of Decision of U. S. General Appraisers Relative to Certain Merchandise Imported. No. 11961.

Certificate to Judgment-roll.

I, W. J. Costigan, clerk of the circuit court of the United States for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above entitled matter.

Attest my hand and the seal of said circuit court, this 11th day of Jan'y, 1897.

[SEAL.]

W. J. COSTIGAN, *Clerk.*

(Endorsed :) Judgment-roll. Filed January 11th, 1897. W. J. Costigan, clerk.

Hon. Joseph McKenna, judge.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for a Review of the Decisions of the United States General Appraisers Relative to Certain Merchandise Imported in Cases Numbers 11961 to 11983, Both Inclusive.

22

Opinion of the Court.

MONDAY, December 14, 1896.

The COURT (orally): This case involves the consideration of the tariff act of 1890. It is contended by the collector of the port that the merchandise in question comes under section —, paragraph 323 of the tariff bill of 1890, which reads as follows:

"Starch, including all preparations, from whatever substance produced, fit for use as starch, two cents per pound."

The importer contends that it comes under section 2, paragraph 730, which reads: "Tapioca, cassava, or cassady, free."

The case is an extremely doubtful one. If the words in paragraph 323, "fit for use as starch," mean physically fit, if I may use that expression, the imported article satisfies the definition. The testimony shows it to be physically fit. If it means, however, commonly used as such, as the Wilson bill expresses it, the merchandise is not within the definition. If we pass that difficulty we meet another one: What is tapioca? Paragraph 730 reads, "Tapioca, cassava, or cassady, free." What, then, is tapioca? The witnesses for the collector say there are only two forms of it, flake and pearl. Some of them testify that they had never heard of the form tapioca flour. The testimony of the importers is that there are three forms, pearl, flake, and the flour. But the witnesses may be discriminated and the difference of their testimonies accounted for. Those of the Government were chiefly acquainted with the retail trade, and their knowledge and experience were hence confined to the San Francisco market. Those of the importers were in the importing trade, and their knowledge extended to other markets as well as that of San Francisco. The testimony therefore,

23

establishes that while possibly in San Francisco there are but two forms of tapioca, the pearl and the flake, in other markets and ports there is a third form, that of the flour.

Interpreting, therefore, the words "fit for use as starch" in paragraph 323 as physically fit, there is a clear conflict between it and paragraph 730, which admits tapioca, pearl, flake, and the flour, free.

But it is not necessary to resolve this conflict or to reconcile the cases of *Ching Yuen v. Kelly*, 14 F. R., 639, and *Heller et al. v. Magone*, 38 F. R., 90, the first of which seems to imply that the designation of an article *co nomine* must prevail over a general description, and the latter of which seems to imply that the designation of a purpose may prevail over a designation *co nomine*. If

the doubts arising from these considerations alone could be resolved in favor of the Government, we would yet be embarrassed by the authority, or seeming authority, of the case of *In re Townsend*, 56 F. R., 222. It is a decision of the circuit court of appeals of the second circuit, and hence authoritative to me. It arose upon an importation into the port of New York of the same article involved in the case at bar, and the same provisions of the tariff act of 1890 received interpretation. The board of appraisers had held the article was not known by the designation "tapioca," and was not in fact such, and was not suitable for food, but held that it was a preparation fit for use as starch. The circuit court hesitatingly concurred with the last conclusion, but dissented from the others. The court of appeals reversed the decision, saying through Judge Shipman as follows:

"The decision of the appeal turns upon the question whether, under the testimony, tapioca flour can be considered as a preparation fit for use as starch. The article has never been sold as a starch, and is not considered in this country as adapted to
24 the ordinary purposes of that article, and has never been manufactured into commercial starch, but it is chemically a starch.

"The term 'preparations fit for use as starch' means preparations which are actually and not theoretically fit for such use, which can be practically used as such, and not which can be made by manufacture fit for such use. Tapioca flour is used for purposes which are analogous to those for which starch is used. It is not used, though it probably could, by adequate preparation be used, for the same purposes, unless its use as a sizing can be called the same purpose. The testimony of the witness upon that subject was not sufficient to justify the stress which the board of general appraisers placed upon it. The very suggestive evidence of the unsuitableness of tapioca for commercial use as starch is that, although it is much cheaper than the starch made in this country, it does not come into commercial competition with starch made here."

It is contended the facts in that case are not the same as in the case at bar; that the evidence did not show there, and does show here, that tapioca flour is "fit for use as starch." It may be that the facts in that case were not the same as the facts in this, but I hesitate to so conclude, because of the confusing consequences of a mistake. It might result in making a law for the port of San Francisco different from that of the port of New York.

I think, therefore, under the circumstances—doubts of the law; a careful deference to authority—I should affirm the decision of the board of appraisers. The board followed a court of appeals. It should be reversed by no less an authority, more especially as the consequences may be a discriminating administration of the tariff laws.

The decision of the board is therefore affirmed.

25 (Endorsed:) Filed December 14, 1896. W. J. Costigan, clerk, by W. B. Beazley, deputy clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for a Review of Decisions of the Board of U. S. General Appraisers Relative to Certain Merchandise Imported, etc. "Starch Case," No. 11961.

Bill of Exceptions.

Be it remembered that on the 14th and 15th days of September, 1896, the said matter came on regularly to be heard in the United States circuit court, ninth circuit, in and for the northern district of California, upon the petition of the above-named petitioner and applicant, John H. Wise, collector of customs for the port of San Francisco, in said circuit, district, and State, duly filed in said court praying for a review of the decision of the board of U. S. general appraisers theretofore made herein overruling the action of said collector herein, and upon the return to said court of said board of U. S. general appraisers herein, and upon the stipulations, testimony, and evidence hereinafter set forth taken before U. S. General Appraiser F. N. Shurtleffe, Esq., as special referee, to whom the case above numbered and specified had been duly and regularly referred by said court to take and return thereto such further evidence as might be offered by any party hereto which said return of the board of U. S. general appraisers and said further evidence and all thereof, so returned as aforesaid, was made and taken at the times and in the manner hereinafter stated, and is as follows :

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for a Review of Decisions of U. S. General Appraisers Relative to Certain Merchandise Imported in cases Nos. 11961 to 11983, Both Inclusive.

Stipulation as to Facts, etc.

It is hereby stipulated and agreed that on the trial of the above cases in said court the following facts shall be taken by the court as proved :

I.

The merchandise in question, though entered at the custom-house at San Francisco, by the importers herein, under various names, such as tapioca, sago, root flour, is all the same substance, viz., the starch grains contained in and derived from the root botanically known as *Jatropha manihot*. In the West Indies the root is known as cassava or manioc; in Brazil as mandioc. All these names indicate the same thing, without change of condition or character.

II.

The manihot, cassava, manioc, or mandioc, is a shrub. There are at least two varieties of this root. The root of the sweet cassava

may be eaten with impunity; that of the bitter, which is most extensively cultivated, abounds in an acrid milky juice, which renders it highly poisonous if eaten in the recent state. Both varieties contain a large proportion of starch.

27

III.

The starchy substance, constituting the importations involved in this controversy, consists of the starch grains obtained from the manihot root by washing, scraping, and grating or disintegrating it into a pulp, which, in the bitter variety, is submitted to pressure so as to separate therefrom the deleterious juices. The starch grains settle and the juice is subsequently decanted, leaving as a deposit a powder, which after repeated washings with cold water and after being dried, is nearly pure starch, and is insoluble in cold water. This is the substance in controversy. If sufficient heat and motion are afterwards applied to this substance, a mechanical change takes place, the grains become fractured and thereby agglutinated. This latter substance is partly soluble in cold water and is the granulated tapioca known as pearl and flake tapioca in commerce.

IV.

The importations in question are from China, and are made chiefly for the purpose of supplying Chinese laundrymen, who use it as starch, and to a slight extent, also for food purposes. Its use for such purposes is, however, limited to the Chinese, except that in some instances in San Francisco this substance is used for starch purposes in their business by white laundrymen, by mixing with wheat or corn starch. Wheat and corn and potato starch are the starches commonly used in the United States.

V.

The substance in controversy is imported from China and used in the Eastern States by calico printers and carpet manufacturers to thicken colors, and in the manufacture of a substitute for gum arabic and other gums. It is also sometimes used for sizing cotton goods.

28

VI.

Among the white people dealing with the Chinese on the Pacific coast the substance in question is commonly known as Chinese starch.

It is understood that either party to this controversy may introduce such further evidence as may be desired which shall not be conflicting with the foregoing admitted facts.

It is further stipulated that in all cases herein where the board of U. S. general appraisers have found the imported article to be other than free, the judgment of the said circuit court shall conform to the finding of said board in such respect with reference to the rate of

duty thereon, provided that such court shall not find the same to be subject to duty as starch.

PAGE, McCUTCHEN & EELLS,
For Importers.

H. S. FOOTE, U. S. Att'y,
By SAMUEL KNIGHT,
Ass't U. S. Att'y, for the Collector.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for a Review of Decisions of the Board of U. S. General Appraisers Relative to Certain Merchandise Imported, etc. "Starch Cases," Nos. 11961 to 11983, Inclusive.

Stipulation as to Evidence.

29 It is hereby stipulated by and between the parties hereto and their respective counsel that it shall be considered as proven herein that the merchandise involved in these suits is the same as that involved in the following decisions and cases:

Decisions of Treasury Dept., ss. 3161, 5302, 7971, 9031, 10277, 10613.

Decisions of board of general appraisers, ss. 10954, 11406 (G. A. 690), 11577 (G. A. 752), 12227 (G. A. 1041), 13692 (G. A. 1930), 13775 (G. A. 1969), and 15155,

Chung Yuen v. Kelly, 14 F. R., 639,

In re Townsend, 56 F. R., 222;

And reference may be made to such decisions and cases upon any trial or argument hereof as fully as if the same formed part of the evidence herein.

Dated January 30, 1897.

SAMUEL KNIGHT,
Ass't U. S. Attorney, for Collector.
PAGE, McCUTCHEN & EELLS,
Attorneys for Importers.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for a Review of Decisions of U. S. General Appraisers Relative to Certain Starch Imported in Cases Nos. 11961 to 11983, Both Inclusive.

Before F. N. Shurtleff, Esq., general appraiser.

THURSDAY, *May 14th*, 1896.

Appearances: Samuel Knight, Esq., assistant U. S. attorney, for petitioner.

Charles Page, Esq., for importers.

30 THOMAS HENRY BROWN, called on behalf of the collector, sworn.

Direct examination.

Mr. KNIGHT:

Q. You are the buyer for Cluff Brothers & Company, are you?

A. William Cluff & Co.

Q. How long have you been with that company?

A. Ten years.

Q. As a buyer?

A. Not all the time; the last five or six years.

Q. What is their business?

A. Wholesale grocers.

Q. Dealing in all lines of business known to the grocery trade?

A. Yes, sir.

Q. Does that company deal in tapioca among other articles known to the grocery trade?

A. Yes, sir.

Q. Will you state whether or not the term "tapioca" is a well-known term to commerce?

Mr. PAGE: We object to the question on the ground that it has not yet been shown that the witness is an importer of that article, or that those for whom he acts are importers.

Mr. KNIGHT:

Q. Mr. Brown, William Cluff & Company is a corporation, is it not?

A. Yes, sir.

Q. Does William Cluff & Company import any of the merchandise in which they deal?

A. Not direct.

Q. Indirectly?

A. Yes.

Q. From what source do you get what you know to be tapioca?

A. From the broker who imports it.

Q. From what brokers have you obtained tapioca in the past few years?

A. S. L. Jones & Company; M. J. Brandenstein.

Q. Anybody else?

A. No, not in particular.

Q. I have asked you whether or not tapioca is a well-known article in commerce.

A. Yes, sir.

31 Q. To what article is the term "tapioca" applied?

A. What they call the flake and the pearl tapioca.

Q. Will you look at the samples in the bottles marked A, B, C, and D, and testify whether or not tapioca embraces the substance contained in those bottles?

A. That is what I call it, flake tapioca.

Q. I will ask you whether or not tapioca commercially embraces any other article than that known as pearl and flake tapioca?

A. Not that I know of.

Q. Do you know commercially any article as tapioca flour?

A. No, I do not; there may be; I don't know.

Q. Will you look at the substance in the tin marked "Inv. 6672, ex Coloma, entered May 18, 1895; sample taken June 11, 1895; marked F. V. 92-101; 10 boxes tapioca flour"—will you look at that substance and state what that would be known to the trade as? When I speak of being known to the trade commercially, I mean as the trade knew it on the 1st day of October, 1890.

A. What we sell it and buy it for is China starch.

Q. State whether or not on the 1st of October, 1890, the substance now shown you would be known to the trade as tapioca.

A. This is what we call tapioca (referring to the substance in bottles A, B, C, and D).

Q. Would the term be commercially applied to the substance in the tin?

A. As tapioca?

Q. Yes.

A. No, not that I know of.

Q. Do you deal in starch, Mr. Brown?

A. Yes.

Q. What kinds of starch do you deal in?

A. Corn starches and laundry starches.

Q. What starches are laundry starches; from what substance is the starch produced?

A. From corn.

Q. Do you deal in the article that is embraced in that tin that has just been shown you?

32 A. We get an order for it once in a while.

Q. How does the order come to you, and how do you fill it?

A. The order comes for a box of China starch, and we send to Chinatown and buy a box of China starch.

Q. Do you know, from your experience in the grocery business whether or not the substance in that tin is fit for use as starch?

A. I wouldn't swear to it.

Q. Will you state as far as you can, what at the present time, the price of the tapioca of commerce, that is pearl and flake tapioca, is, and what the prices of corn, wheat, and potato starch are, and the price of China starch? Now, if you please, the pearl tapioca, and flake tapioca.

A. $2\frac{1}{4}$.

Q. That is, $2\frac{1}{4}$ cents a pound?

A. Yes, sir.

Q. In what quantities?

A. 25, 50, or 100 sack lots.

Q. What would be the price of corn starch in similar lots?

A. $4\frac{1}{2}$, $4\frac{3}{4}$, up as high as $6\frac{1}{2}$ cents, different grades.

Q. And wheat starch?

A. I don't know. The gentlemen here can tell you the price of wheat starch.

Q. You don't deal in potato starch, either?

A. No, sir.

Q. What, at the same time, and in the same quantities, would be the price of that substance in the tin?

A. I believe this comes in about 80-pound boxes; about $\$3\frac{1}{2}$ a box.

Q. About $\$3\frac{1}{2}$ for 80 pounds?

A. Yes, as near as I can remember.

Q. As far as you know, Mr. Brown, was, on the first day of October, 1890, any other name applied to the article which you have in your hand, which is the article embraced in that tin, than China starch?

33 A. Not that I know of.

Q. How extensive has been your business, and how extensive is the business of William Cluff & Co.?

A. In what way?

Q. I mean as far as the sale of merchandise, and the sale of groceries generally. You sell largely outside of the city?

A. Yes, sir; all over the country.

Q. You sell outside of the State?

A. Yes.

Q. How far; do you sell to points in the Eastern States?

A. Oh, no, but Nevada, Idaho, Arizona.

Q. On the Pacific coast generally your trade is?

A. Yes, sir.

Cross-examination.

Mr. PAGE:

Q. You say the firm of Cluff Brothers are not importers directly?

A. No, sir. It is William Cluff & Company.

Q. And they do not import this stuff that you have called China starch, at all?

A. No.

Q. I suppose it has a very limited sale with you, has it not?

A. Yes.

— And when occasionally, an order comes from somebody who wants China starch, you send to Chinatown?

A. Buy as we need it.

Q. And fill the order?

A. Yes.

Q. Have you ever heard of an article called tapioca flour in your experience?

A. No; not that I know of.

Q. Looking at a market report, published in Singapore, I find under the head of tapioca these varieties, flake tapioca, pearl tapioca, flour tapioca. Does that fact bring to your knowledge that there is such a thing known commercially as tapioca flour?

A. Not very much in this market that I know of. I never had an order for it—never filled an order for it.

34 Q. You don't know of the existence of tapioca flour then at all?

A. No.

Q. And this stuff that you call China starch is simply a name that is given to that substance locally in San Francisco?

A. Yes; the commercial name of it here, I believe.

Q. It is the name by which you know it here?

A. Yes.

Q. It is not dealt in extensively, or to any extent whatever by the ordinary American wholesale grocer, so far as you know?

A. I can't tell how others use it.

Q. You have no personal knowledge of importations from China, I understand, of any kind in your line of business?

A. Yes; teas and such as that.

Q. You do import directly your teas from China?

A. Yes.

Q. Is that the only thing?

A. That is about all.

Q. Supposing a person were to come into your office and ask for tapioca; would you give them anything in particular, or ask them what they wanted?

A. Give them the article here (referring to the substances in A, B, C, and D).

Q. Referring to the pearl tapioca or flake tapioca?

A. Flake.

Q. What is that used for?

A. Pudding.

Q. Which would it be, the pearl or the flake?

A. The flake.

Q. Is there more than one kind of flake?

A. No.

Q. As far as you know there is only one kind of flake tapioca?

A. Yes.

Q. And what use is the pearl tapioca put to?

A. The same use.

Q. For pudding?

A. Yes.

Q. Why wouldn't you give them the pearl as well as the flake?

35 A. The other is used more extensively.

Q. In San Francisco?

A. Yes.

Redirect examination.

Mr. KNIGHT:

Q. Mr. Brown, I want to show you some further merchandise, and ask you to testify, if you can, what, on the first day of October, 1890, this merchandise was known as?

A. This we know as pearl tapioca.

(The sample referred to is marked for identification "E.")

Q. One further question. How does the substance in the tin differ from the tapioca of commerce?

Mr. PAGE: That is objected to on the ground that the witness has not been proved to know yet what tapioca of commerce is.

A. It is a powdered substance.

Q. How about the color?

A. The color is the same.

Q. No difference in the degree of color, is there?

A. Yes; there is a shade in it, of course. I suppose if this were ground it might be the same color as that.

Q. Do you sell China starch as you know it, to any other persons than to Chinese laundrymen?

A. Oh, yes; we sell it to the trade. I can't tell who they buy it for.

Q. Is the trade white or Chinese?

A. The trade is white.

Q. When you say the trade, do you mean the groceries or the laundries?

A. The general retail trade.

Q. Do you know to what other uses starch is put than laundry; do you ever sell it to confectioners?

A. Sometimes.

Q. Do you sell it to cloth manufacturers?

36 A. No.

Q. Do you know whether or not it is used in making blacking?

A. I couldn't say.

G. P. LAUINGER, called on behalf of the collector, sworn.

Direct examination.

Mr. KNIGHT:

Q. What is your business?

A. Wholesale grocer.

Q. With what firm are you connected?

A. Tillman & Bendel.

Q. And what is your position with Tillman & Bendel?

A. Secretary.

Q. How long have you been with them?

A. 10 or 11 years.

Q. What are Tillman & Bendel engaged in?

A. Wholesale grocery business, tea importing, coffee and spice manufacturers.

Q. Here in San Francisco?

A. Yes, sir.

Q. How extensive a business have they; do you do business with eastern points, or are you confined to this coast?

A. Confined mostly to the coast.

Q. Is tapioca one of the articles that you deal in?

A. It is.

Q. I am referring now to the tapioca of commerce of October first, 1890. What is tapioca, as you understand, commercially at that time?

MR. PAGE: I object to the testimony on the ground that the witness has not yet been shown to be an importer, or to belong to an importing establishment of the article in question.

MR. KNIGHT:

Q. Does the firm of Tillman & Bendel import any of its merchandise?

A. Some of it.

Q. Do you import any tapioca or starch?

A. No; not that I recollect.

Q. Where do you get your tapioca and starch?

37 A. Through the commission men here.

Former question read as follows: I am referring now to the tapioca of commerce of October 1st, 1890. What is tapioca as you understand, commercially at that time?

MR. PAGE: We make the same objection.

MR. KNIGHT:

Q. To what article is the term "tapioca" commercially applied on the 1st day of October, 1890?

A. To this (referring to contents of bottle marked "A").

Q. To what do you refer, that one specially?

A. No, to all four.

Q. To all flake tapioca?

A. Yes, and it is also applied to all pearl tapioca.

Q. Will you look at Exhibit "E"—is that tapioca?

A. Yes, sir.

Q. Will you look at the substance in the tin?

A. That appears to be a substance we call China starch.

Q. I will show you the substance in the tin, which is marked

"Tie Yick, 5098, sago flour, 86—105." Will you state what that substance was known to the trade as on the 1st of October, 1890?

Mr. PAGE: Same objection.

A. That is apparently, or appears to be, the same as in the other tin; that is, China starch.

Q. Would that article be known as tapioca at the date I have mentioned, commercially?

A. That is a question. Some people would probably refer to it as tapioca flour; but we would only know it by the name of China starch.

Q. What people would refer to it as tapioca flour?

A. Probably the people that manufacture those goods.

Q. Is that a flour?

38 A. Well, it has the general feeling of flour.

Q. All flour contains gluten, does it not?

A. Yes.

Q. Does that contain any gluten?

A. I couldn't say from looking at it.

Q. You could not tell from feeling or looking at it?

A. Hardly.

Q. If it was found that that did not contain gluten, would you still think it was a flour?

A. That I couldn't say. I will take back what I said before. I would hardly take this to be a flour of the ordinary kind. It has more of the feeling of powdered starch, on account of the gritty substance in it.

Q. Is the term "tapioca" applied to any other article of commerce than pearl and flake tapioca, as far as you know? That is, I am now referring to the 1st of October, 1890?

Mr. PAGE: Same objection as before.

A. Well, it is applied to another grade besides these that are on exhibition here now, and what is commonly called sago. In fact, here on this coast it is referred to almost entirely as sago.

Mr. KNIGHT:

Q. Will you now look at the sample that is shown you marked "F," and testify whether or not the term "tapioca" is also applied to that article?

A. It is, but more often designated as sago.

Q. Then, is the substance in the tins known commercially, and has it been known commercially, as "tapioca"?

Mr. PAGE: Same objection.

A. We call it China starch.

Mr. KNIGHT:

Q. Has it been known commercially as "tapioca" in your trade?

A. No; we would not know it by that name.

39 Q. Do you deal in the article you designate as China starch?

A. Yes.

Q. You handle it under that name?

A. Yes, sir.

Q. To whom do you sell it?

A. We sell it to the retail dealers, storekeepers.

Q. Dealers in what?

A. Groceries.

Q. Do you sell it to another class of people besides grocers?

A. Not as a general rule. We may have done so at one time, or we may do it occasionally; that I am not in a position to say.

Q. Do you know for what purposes that China starch is used?

A. For laundry purposes.

Q. For any other?

A. Not that I know of.

Q. Do you know whether it is used by white laundries at all?

A. I believe that some few white laundries use it, but mostly the Chinese.

Q. Is that substance in those tins fit for use as starch?

Mr. PAGE: The witness has not been proved to be a laundryman.

Mr. KNIGHT:

Q. You have occasion in your business to know the merit of the substance—not of your own experience?

A. From actual experience I could not say.

Q. Will you state what the current market price at the present date of the tapioca of commerce is; that is, the pearl and flake tapioca?

A. Nominally, 2½.

Q. In what size lots?

A. Well, quantity cuts no material figure. Probably 50 to 100 bag lots.

Q. What would be the market price of corn starch, if you deal in that article, at the same time?

A. Corn starch, from 4½ cents up.

40 Q. To 6?

A. Yes, and 6½ or 7 cents.

Q. Do you deal in wheat starch or potato starch?

A. No.

Q. At the same time, what would be the current market price of the substance in controversy, this China starch?

A. Probably \$3.60 a case of 80 pounds.

Q. Do you sell any of this China starch for the purposes of stiffening cloth, if you know?

A. We don't know what they use it for.

Q. Do I understand you to say that you sold only to groceries, and to a slight extent to laundries?

A. We don't sell to any laundries direct; we sell to the retail grocery trade only.

Q. You don't sell to houses engaged in the manufacture of clothing?

A. No, sir.

Cross-examination.

Mr. PAGE:

Q. If any one were to ask you for tapioca flour, would you have any idea what they meant?

A. I would not have had until a short time ago.

Q. How long ago, the last few minutes, or last few days?

A. The last few days, when I came to study the matter up a little.

Q. You investigated the matter for yourself, knowing that you were to be called upon possibly for examination?

A. Yes, sir; we had samples at our store.

Q. And on your examination you found out that in the general markets of the world there was such a thing as tapioca flour?

A. Yes.

Q. And that is the substance that is now before you in the tin boxes?

A. It has that appearance.

Q. You speak of a substance called China starch. That name is applied to it locally in San Francisco?

41 A. Yes, sir.

Q. And as far as its use is concerned for laundry purposes, it is entirely local so far as you know?

A. So far as I have knowledge. It is an article that is handled so very little by us that we don't know to what different uses they may put it.

Mr. KNIGHT:

Q. By whom is that article principally handled?

A. Which?

Q. The substance in controversy, China starch.

Mr. PAGE: Where?

Mr. KNIGHT: Here in San Francisco.

A. By the Chinese laundries.

Mr. PAGE:

Q. "Handled" is the question; Chinese merchants, I suppose?

A. Yes.

Q. And after informing yourself with regard to the commercial name of the article, you would call it tapioca flour, would you not?

A. Well, no.

Q. I mean the general commercial designation throughout the country and throughout the world, leaving aside the mere designation, "China starch" in San Francisco, or on the coast here; what would you call that article? Supposing you were going to New York on the subject, would you say China starch, or would you say tapioca flour?

A. If I were to write to the party that sent the samples out to us, write "tapioca flour," for the simple reason that he so labeled his boxes, and I would at the same time mention that we called it out here "China starch," to be sure that we got the right article.

Q. When you speak of samples, where would they come from?

A. Singapore.

Q. Those you have actually received, you have received samples of this article from Singapore, and they are so marked and imported as tapioca flour.

A. They are so marked; what they are imported for I could not say.

42 Q. Are you aware of the fact that the market reports of this country, and of the world generally, speak of an article generally known as tapioca, divided into three kinds, pearl tapioca, flake tapioca and tapioca flour?

A. Yes, I have seen that on the market reports.

Q. That is the usual designation on the market reports, is it not?

A. Well, no, I can't say that it appears on all of them.

Q. I will show you the market reports from Singapore, from which this article comes. General heading, "Tapioca, flake pearl, flour." Is not that the way you understand it to appear generally in the market reports?

A. Well, no; the reports that I have seen have omitted the name "flour."

Q. Where were those reports got out, in San Francisco?

A. No.

Q. Were they reports which emanated from the country which produces those articles or which imports them?

A. Yes.

Q. You have seen them leaving out tapioca flour?

A. Yes, I am pretty sure of that.

Q. And, also, with the tapioca flour present?

A. Yes, sir.

Q. The absence of tapioca flour being mentioned in the market report would simply indicate the absence of that as a factor in the market; that is, that none of it is being sold—to a business man.

A. Well, I don't know. They probably have different reports for different sections of the country.

Q. I mean, taking one of those reports, if tapioca flour did not appear on it, under what name would it appear—not under the name of pearl or flake would it?

A. No.

Q. Would you say it would appear under the general name of tapioca?

A. No.

43 Q. Would it appear under China starch? Did you ever see it appear under the name of China starch in a report of any kind?

A. No.

Redirect examination.

Mr. KNIGHT :

Q. Supposing you were writing to a person concerning this merchandise in controversy, and it was not labeled "tapioca flour," would you refer to it as tapioca flour?

A. No.

Q. In other words, then, you would simply refer to it as tapioca flour to any person from whom you received it, to designate the article which he sent?

A. Under the present circumstances, yes.

Q. How would you designate it in the trade?

A. In local trade?

Q. In the general trade, so far as you know it?

A. China starch.

Q. You are speaking of market reports. Are there any market reports concerning this article in controversy published in this country?

A. There is one issued here; you couldn't exactly call it a report; it is more of a price-list.

Q. Issued here in San Francisco?

A. Yes, sir.

Q. By whom?

A. William Ireland.

Q. The broker?

A. Yes, sir; merely quoting the market prices on those goods.

Q. Do you know how the substance is referred to in that?

A. It is not mentioned.

Q. Do you know whether it is intended to be omitted or is it included in some other article?

A. There are very few people that buy tapioca that use this substance here, so that when reports are issued here, or the price-list they don't put them together, because people that buy tapioca
44 will probably not in a hundred years buy any of this substance.

Q. Have you ever known this substance in controversy to be referred to in any report published in this country?

A. That I don't remember. We don't notice every item that is published in the reports.

Q. But in any report, say in a foreign report, how is this article in controversy generally classed? Is it generally classed as a tapioca flour, or as starch, or China starch, or tapioca, or under what name is it classed, either in the foreign price-list or the market report?

A. That I couldn't say, because when they had put on there "tapioca flour," on the market reports, I would not have known it as being the same thing as the China starch.

Q. You have a sample of that, have you, in your pocket?

A. Yes, sir.

Q. Will you state what that is a sample of?

A. I have samples here that are marked "tapioca flour," "Sarawak

sago flour," and "Singapore sago flour." By looking at those samples, you can see what they call sago flour, and what they call tapioca flour. What we call sago out here is not sago.

EDWARD A. KEIL, called on behalf of the collector, sworn.

Direct examination.

Mr. KNIGHT :

Q. You are connected with the firm of Goldberg, Bowen & Lebenbaum?

A. Goldberg, Bowen & Co.

Q. Are you buyer for them?

A. No, sir.

Q. What is your position there with them?

A. In the grocery department.

Q. How long have you been with that company, and in the grocery department?

A. Six years.

45 Q. Your house is engaged in the general grocery trade, is it not?

A. Yes, sir.

Q. Will you state how extensive a business they do, speaking with reference to the localities where they do business?

A. Mostly in San Francisco, and in California generally.

Q. Do you do business throughout the Pacific coast?

A. Yes, sir.

Q. Do you do any business east of the Rockies?

A. Very little.

Q. You have occasion to order goods east of the Rocky mountains?

A. Not in this line.

Q. Where do you get your tapioca and your starches from?

A. Local; get them in the city mostly.

Q. Do you buy from the brokers, or from any other wholesale house?

A. Sometimes brokers, sometimes wholesale.

Q. Are you acquainted with the commercial significance of the term "tapioca," as it was used on the 1st of October, 1890?

Mr. PAGE: We object to that on the ground that the witness has not been shown to be an importer, or connected with the importing trade.

A. Yes, sir.

Mr. KNIGHT :

Q. To what was that term applied, and to what is it now applied?

Mr. PAGE: Same objection.

A. To tapioca and the samples as seen here.

Mr. KNIGHT:

Q. In the bottles A, B, C, and D?

A. Yes, sir.

Q. And how about the substance in "E"?

A. That is pearl tapioca.

46 Q. In other words, it is applied to pearl and flake tapioca?

A. Yes, sir.

Q. Is it applied to any other substance than pearl and flake tapioca?

A. No, not that I know of.

Q. Do you know any article termed "tapioca flour" commercially, or as it was commercially termed on the 1st of October, 1890?

A. No.

Q. Will you look at the substance contained in the two tin boxes, and testify what, to the trade, those articles were known as, on the 1st of October, 1890?

Mr. PAGE: I object to that on the ground that it does not appear what trade. If you mean the importers, or the retail grocers—

Mr. KNIGHT:

Q. I refer to the trade with which the witness is now connected.

Mr. PAGE: Retail grocers?

Mr. KNIGHT:

Q. You are retail and wholesale?

A. Yes, sir. China starch.

Q. If you had occasion to buy such merchandise from the brokers who import it, under what term would you buy it?

A. China starch.

Q. Will you state whether or not that is known, and has been known commercially, either in the wholesale trade, or among the persons from whom you buy it, as tapioca?

A. Not to my knowledge. I never heard it called tapioca.

Q. Do you know any substance commercially known either to the wholesale trade or among the people from whom you acquire starches and tapioca, as tapioca flour, a substance known as tapioca flour?

A. No.

Q. To whom do you sell the article in controversy in those tins?

A. We sell it to institutes and private individuals.

47 Q. To what kind of institutes?

A. There is the Children's hospital we sell it to.

Q. Do you know for what purpose?

A. Yes, sir.

Q. For what?

A. For starching clothes.

Mr. PAGE: I move to strike that out as hearsay.

Q. Do you know it of your own knowledge?

A. They tell me they want it for that. They buy both corn

starch and this starch, and one they use for cooking, and the other for starching their clothes.

Mr. KNIGHT:

Q. To what other institution do you sell it besides the Children's hospital?

A. I couldn't tell now.

Q. Do you sell it to laundries?

A. No; they can do better uptown than that.

Q. The laundries can?

A. Yes.

Q. You don't have any trade with Chinese laundries?

A. No.

Q. If they obtain it, they do not obtain it through you, as far as you know?

A. No.

Q. Will you state at present what the current market price of the tapioca of commerce is, the flake and pearl tapioca?

A. About two dollars and a half.

Q. Corn starch; what is the current market price of that?

A. From $4\frac{1}{2}$ up to 7.

Q. And the China starch, that is, the substance here in controversy; what is the market price of that?

A. About \$3.75.

Q. For 80 pounds?

A. 80-pound boxes.

Q. Have you a bulk starch?

A. Yes.

Q. What is that starch, and how is it sold?

A. That is in large lumps. That is not called corn starch; that is known as the laundry starch.

Q. What is it made from, do you know?

48 A. Made of corn.

Q. Made of corn for laundry purposes; it is not as fine as the corn starch used for culinary purposes?

A. No; to my best belief and knowledge, it is a coarser grade of corn starch.

Q. And what is that sold for?

A. I couldn't tell off-hand what that is sold for now.

Q. How does it compare with the finer corn starch, cheaper or more expensive?

A. It is cheaper.

Q. Do you know how it compares in price with China starch?

A. It is not quite the price of China starch; it is more expensive than China starch. That is why China starch is used, because China starch is cheaper.

Q. You say corn starch is from $4\frac{1}{2}$ to 7 cents. I suppose you were speaking of the finer grades?

A. Yes.

Q. And this bulk starch is less than 4 cents.

A. Yes, sir; I believe the stiffening qualities of this China starch is greater than the other starch.

Q. As I make it out, the corn starch is about $4\frac{1}{2}$ to 7 cents, and the China starch is about \$3.75 for 80 pounds?

A. Yes.

Q. There isn't very much difference, is there, then, between the price of China starch and the price of the bulk starch?

A. Our fine grade of corn starch is about 7 cents, $7\frac{1}{2}$, and this stands about—I couldn't tell off hand what that washing starch does cost.

Cross-examination.

MR. PAGE:

Q. Have you ever bought this stuff in controversy here, yourself from anybody?

A. No.

49 Q. You have never dealt with the brokers?

A. No.

Q. So far as you know, your firm does not buy it from brokers; buys it from Chinese merchants?

A. This China starch?

Q. Yes, what you call China starch.

A. Buy it from the Chinamen.

Q. So that you really don't know if it has any commercial designation among importers and those who deal with the importers outside of the Chinese—you have no knowledge what that designation is?

A. No.

Q. Did you ever, in the course of your business experience, hear of such a thing as tapioca flour?

A. I have had it called for, and I would naturally give them this known as China starch, the same as I would if they called for potato flour or potato starch, I would give them the same thing.

Q. That is, if anybody asked for—

A. That is the retail trade.

Q. That is, if a retailer asked?

A. No, if a customer asked for it.

Q. If a customer asked for tapioca flour, you would give him this article, and you would give it to him if he asked for potato flour?

A. No, potato starch or potato flour, I would give them the same thing, or China starch or tapioca flour.

Q. So, if they asked for tapioca flour, you would recognize that that is what they wanted?

A. You have to guess a good deal in the retail trade what customers want.

Q. Are you aware of the fact whether this is made of tapioca, or that tapioca is the base of it?

A. I had always understood it was.

Q. If a person asked you for tapioca, would you ask them what

kind of tapioca they wanted, whether pearl tapioca or flake tapioca?

50 A. I would give them flake tapioca unless they asked for pearl.

Q. That is simply because most people who come in to buy from a grocery store buy for cooking purposes, the flake tapioca?

A. Yes.

Q. And you naturally think that is what they want?

A. Yes.

Q. How do you designate your various tapiocas; are they all kept marked so that it appears that one thing is pearl tapioca and another is flake tapioca?

A. Yes.

Q. So that the word "tapioca" does not convey any impression at all to your mind what the individual wants; you have got to find out either by asking him or offering one?

A. Yes, sir.

Mr. KNIGHT: Are you referring to the individual in the trade or to the customer?

Mr. PAGE: I am referring to the customer.

Q. Does your firm deal, to any large extent, with selling to retailers, who sell again, or is not your firm mainly dealing with families?

A. Are you referring to tapioca?

Q. To everything, all the goods of your house.

A. We retail and job.

Q. Do you job to any large extent?

A. Yes.

Q. In the city?

A. Yes.

Q. Do you job in this article to any large extent?

A. No.

Q. It is a very rare thing that anybody wants this tapioca flour, or China starch?

A. There is a limited sale for China starch.

Q. And, as I understand it, when you want it yourselves, in order to get a supply, you go up to Chinatown, and buy from the Chinese merchants?

A. We do.

Q. From what you say I presume you are not familiar at
51 all with the ordinary commercial reports that are used by the importers?

A. No, I have no occasion for that.

Redirect examination.

Mr. KNIGHT:

Q. Is not the term "sago" sometimes applies to tapioca, and *vice versa*?

A. Not in the retail trade.

Q. Is it in the wholesale?

A. I think so, yes.

Mr. PAGE: In your own trade, in your own knowledge?

Mr. KNIGHT:

Q. The wholesale grocery trade.

A. When we go downtown we talk differently than we would to a customer.

Q. The terms "tapioca" and "sago" are sometimes loosely and carelessly used interchangeably, are they not?

A. To a certain extent, yes.

Q. Is that a fact among people in the trade, as well as dealing with individual customers?

A. An individual customer would call for sago, or call for tapioca.

M. F. LOEWENSTEIN, called on behalf of the collector, sworn.

Direct examination.

Mr. KNIGHT:

Q. What business are you engaged in?

A. In importing and shipping business.

Q. With Castle Brothers?

A. Yes.

Q. What is your position in that firm?

A. Buyer, and connected with the export department—charge of the exports.

Q. Are Castle Brothers engaged in the wholesale grocery trade?

A. They were up to I should think three years ago.

52 Q. What is their business now?

A. Shipping and commission importing.

Q. Importing what lines of goods?

A. Coffee, tea, silks.

Q. Any groceries?

A. Spices, occasionally.

Q. Will you state whether or not, on the 1st day of October, 1890, the firm of Castle Brothers were carrying, with their other stock, starches, tapioca, and sago?

A. Yes, sir.

Q. To how late a date have they carried those articles?

A. We carry tapioca now, to a certain extent.

Q. How did you get your tapioca?

A. Lately we have been buying it of importers. We used to be, perhaps, the largest dealers in tapioca, some three or four years ago. What I mean by dealers is jobbers.

Q. Have you ever obtained your tapioca in any other way than by buying from dealers; have you ever imported it?

A. Direct from China and Singapore?

Q. Yes.

A. Not since I am in the firm.

Q. Have you ever bought it from brokers?

A. Yes, have given what we call importation orders.

Q. To brokers, to import it for you?

A. Yes, such as S. L. Jones, or Brandenstein. Of course, all business is done between the importer and the dealer.

Q. Were you, on the 1st day of October, 1890, acquainted with the commercial use of the term "tapioca"?

A. Yes, sir.

Q. To what article at that time was the term applied?

A. To vegetable matter as represented by these samples.

53 Q. A, B, C, and D?

A. Yes, known in the trade as flake tapioca, large and small.

Q. Will you now look at the substance in the box marked "E" and testify whether the term "tapioca" was applied to that?

A. Yes, medium pearl this would be, and this is known as small pearl tapioca (referring to "F"), but known locally as sago.

Q. Will you look at the substance in the tins and testify whether or not at that time, that was commercially known to your trade as tapioca?

A. Not so far as I know.

Q. Was it known as tapioca flour?

A. No, not as far as I know.

Q. How extensively were these terms used that you refer to? Were they used merely here in San Francisco, or elsewhere, as far as you know?

A. I don't quite understand the question.

Q. Was the term as used by you the same as that used by the brokers in this business?

A. Yes, with the exception, as I said before, small pearl tapioca is known in this market as sago.

Q. What, commercially, at that time, was the substance in those two tins known as?

A. In my judgment, as China starch. But then it is pretty hard to tell.

Q. Do you know how that article was referred to at that time in any trade journals or price lists?

A. Locally, you mean?

Q. Either locally, or any that you have seen.

A. Locally, I should think—

Mr. PAGE:

Q. Tell what you know, not what you think—what your recollection is.

54 A. China starch, but I don't remember that I ever noticed it quoted on any Singapore price-lists, or London or New York price-lists, which I may have looked at, not being interested in it.

Mr. KNIGHT:

Q. Will you state whether or not that substance is commercially known as "tapioca," the substance in those tins?

Mr. PAGE: That is objected to on the ground that the witness states that he has never been interested as an importer of that article.

A. No.

Mr. KNIGHT:

Q. Have you dealt in starches to any extent?

A. Yes, sir.

Q. How long have you been dealing, or has the house of Castle Brothers, to your knowledge, been dealing in starches?

A. Since 1850.

Q. And your connection with the house dates from what time?

A. 1889, I believe.

Q. What different starches has your house been dealing in?

A. Laundry starch and corn starch, China starch.

Q. In wheat starch or potato starch?

A. No.

Q. The laundry starch is what; is that corn starch?

A. It is made out of corn as far as I understand it—out of potato and corn, and corn starch made out of corn.

Q. To whom have you sold the China starch, and for what purposes, if you know?

A. To country merchants, I don't know for what purposes.

Q. That is, grocers?

A. Yes, sir.

Q. Have you sold to laundries?

A. No.

Q. Have you ever done business with the Chinese in that line of goods?

A. Chinese merchants in the interior; yes, sir.

Q. That is, those who have general grocery stores?

A. Yes.

Q. Any Chinese laundrymen?

55 A. No; we had some Chinese camps; I don't know whether they had stores, but some Chinese mining camps.

Q. Can you state what the current market price of the tapioca of commerce is?

A. About 2½.

Q. And what is the price of laundry starch?

A. From 3½ to about 5, 5½.

Q. What is the price of corn starch?

A. 4½ to 7.

Q. What is the price of the China starch?

A. About \$3.75 per case.

Q. That would be a little over 4½ cents?

A. Yes; \$3.50 or \$3.75. We never bought any large quantity.

Q. Do you know whether or not those prices are materially different from the prices on the 1st of October, 1890? Has there been any change to any extent?

A. Yes; tapioca was, at that time, as far as I can remember, about twice as high.

Q. And how about the other?

A. Starches were somewhat higher, one and two cents a pound.

Q. But they maintained other than that the same relative values, did they?

A. The price of tapioca has decreased more proportionately than that of starches.

Q. That is, the price of tapioca has dropped more than the price of starch?

A. Yes; but the price of tapioca is largely regulated in this market by the stock on hand. I have known tapioca, for instance, to be worth four cents, when it could be landed for three cents, but there not being much on hand, the price went up temporarily.

Q. Will you state whether or not all flours, as the term is commercially used, contain, among other ingredients, gluten?

A. I don't know.

56 Cross examination.

MR. PAGE:

Q. I understand you to say that the firm with which you are connected never has been an importer of this article in controversy here, that is, in the tins, what you call China starch?

A. I couldn't say as to that. I am only speaking of my individual experience.

Q. In your experience, it has never been an importer?

A. Not what you would call direct; we have imported through commission houses.

Q. Has your purchase through commission houses resulted in the importation by commission houses of the article that you desired, and its subsequent transfer to you?

A. Yes.

Q. Have those purchases made in that way in the past by you included the purchase of this article, which is the subject of inquiry here, that is to say, the powdered stuff?

A. No, sir.

Q. Never has been?

A. No, sir.

Q. Have you ever heard yourself of such a thing as tapioca flour?

A. Not up to a few days ago, when this matter was brought to my attention.

Q. When this matter was brought to your attention, did you make an investigation to find out whether throughout the world or the United States generally, any substance had the name of tapioca flour.

A. I have made some investigation, but not a thorough investigation.

Q. In your investigation, did you come across the name "tapioca flour"?

A. No.

Q. To what extent did you make any investigation?

A. I made inquiries among the trade.

Q. That is, among the trade such as yours, your own house, the jobbers?

A. Yes.

57 Q. Did you make any inquiry of anybody who had any knowledge of the China trade in this matter, as either having dealt in Singapore or having dealt here in it?

A. No.

Q. Did you inquire, or find out, whether there were any market reports published throughout the United States, or in ports of entry of the United States, which would give you an idea what the commercial name under which it was imported, was?

A. No, I didn't look this up from the reports.

Q. When you speak of this substance as being commercially known as China starch, you do not intend to say more than that is what you understand in San Francisco?

A. Yes, that is all.

Q. You have no idea that it goes by any such name in New York, Philadelphia, or Baltimore, or any of those ports?

A. I have had no experience there.

Q. Have you any knowledge based upon experience as an importer—and by that, I mean as a member of an importing firm—that the substance contained in these glass bottles, which have been described specifically as New York, or Philadelphia, or Baltimore, or any of those pearl tapioca, and flake tapioca, are imported under the commercial name as tapioca or as pearl tapioca and flake tapioca respectively?

A. If you do not admit that we have ever imported it, I do not know that I can answer this question.

Q. I understood that you had had dealings with brokers or commission merchants who, upon your order had made importations of some classes of tapioca?

A. Yes.

Q. In these classes of tapioca, how have they been designated, as pearl tapioca and flake tapioca respectively, or as tapioca alone?

58 A. No, as simply pearl or medium pearl, and sometimes the word "tapioca," although we understand simply pearl and medium pearl and flake to represent different classes.

Q. If you wanted to make a purchase in Singapore, or wherever this substance is to be had at the greatest advantage, through a broker or through a commission house, you would make your order of so many pounds, or other measure, of pearl tapioca, or flake tapioca, or whatever it was that you wanted?

A. Yes, sir.

Q. Tapioca is the generic name for the various substances?

A. Yes, sir; there are some five or six or seven different kinds.

Q. There are other kinds of tapioca that are known to the world

besides those that are usually imported into this market, are there not?

A. Yes.

Redirect examination.

Mr. KNIGHT:

Q. To what extent are you acquainted with the general use of the term tapioca, throughout the world, as distinguished from the use of the term "tapioca" at this port? You have stated, I understand, in your cross-examination, that the term as used throughout the world embraces tapiocas that we do not use here.

Mr. PAGE: No, he says there are other kinds of tapioca besides flake and pearl.

Mr. KNIGHT:

Q. Will you state to what extent you are acquainted with the foreign use of that term, as applied to the local use?

A. I have looked up some foreign price-lists.

Q. Will you state what articles are embraced under the general, or we might say universal, term "tapioca," or the term "tapioca" as applied outside of this market?

59 A. Small pearl, known in this market as sago, and medium pearl, which is known as pearl tapioca, and large pearl, which I have never seen here, and flake tapioca, large and small, and that is about all, as far as I know.

Q. Taking tapioca in that general sense as used throughout the world, is the substance in controversy, the China starch, called tapioca?

A. Not to my knowledge.

Mr. PAGE:

Q. Well, you have no knowledge of what the commercial designation of that article is, outside of San Francisco?

A. I have had no experience.

Q. All you know is, that in San Francisco, that article has acquired the name of China starch, and that is all you know about it?

A. Yes.

Mr. KNIGHT:

Q. I understood you had looked up the matter in the trade journals of the world?

A. You understand, not having been interested in what you call Chinese starch or tapioca flour, I never noticed it, but I was more or less interested in tapioca and sago.

Q. Do you know where trade journals are published covering this article in question? I mean domestic.

A. Yes; I will furnish you some.

Q. Covering this article?

A. I don't know about this. I am very frank with you, because

there are very few who handle this Chinese starch, because the Chinese laundries in the city buy it by themselves from Chinatown.

Mr. PAGE:

Q. You don't know whether this stuff is used in other parts of the United States for confectionery purposes, and sizing purposes, or stiffening cloth, or anything of that kind?

A. No.

Q. You know nothing about it in other words.

A. No.

(Adjournment taken until Tuesday, May 19th, 1896.)

60

TUESDAY, May 19, 1896.

J. J. SCHUTE, called for the collector, sworn.

Mr. KNIGHT:

Q. You are the manager of Haas Brothers?

A. Yes, sir.

Q. In what business are Haas Brothers engaged?

A. Wholesale grocers and importers.

Q. Do you do any importing?

A. Yes, sir.

Q. What lines of goods do you import?

A. We import coffees, teas, wines, all foreign goods, sardines, China goods, such as pepper, tapioca, and sago.

Q. How long have you been with that firm?

A. Twenty-five years.

Q. You refer to tapioca among the articles which you say you import. Are you acquainted with the commercial designation of that term as used among the importers?

A. Yes, sir.

Q. To what, on the 1st of October, 1890, was the term "tapioca" commercially applied in such trade?

A. Tapioca comes in two styles to this market, small and large. The large size is called the flake tapioca, and the small size is the tapioca.

Q. Do you refer to the other as the pearl?

A. The pearl and flake.

Q. Is the term "tapioca" applied to any other substance than the substance contained in the bottles marked A, B, C, and D?

A. No, sir, these are all that are known in the market here by us in the trade, pearl and flake.

Q. Will you look at the substance in the box marked "F," and testify what that would be known as commercially, and was on the 1st of October, 1890, to the importing trade?

61 Mr. PAGE: An objection is taken to all the testimony of this witness upon the ground that it has not been shown that he is an importer of the substance now in controversy.

A. As pearl tapioca.

Mr. KNIGHT :

Q. That would be known as pearl tapioca ?

A. Yes, sir.

Q. I now show you tins containing the substance in controversy, and will ask you whether or not the substance in those tins would be called commercially to the importing trade, tapioca, or not ?

A. No, sir.

Q. Do you know what that substance is known as commercially, and has been known as commercially ?

A. No, sir.

Q. Do you deal in starches ?

A. Yes, sir.

Q. Do you import any of your starches ?

A. No, sir.

Q. Where do you get your starches from ?

A. From the East.

Q. What starches do you deal in ?

A. Principally Oswego.

Q. Oswego starch is made from what substance, what cereal, if any ?

A. I am not very familiar with that. I could not tell.

Q. Do you deal at all in the last article that has been shown you, the article embraced in the tins ?

A. This looks exactly like some of the starches we are dealing in.

Q. How do you know that article commercially, under what term ?

A. Under starch.

Q. Do you differentiate it in any way from other kinds of starches, by the name ?

A. No, sir ; only there are different qualities, such as Silver Gloss, which is a finer quality, and laundry starch.

62 Cross-examination.

Mr. PAGE :

Q. The word "tapioca" is a generic name for a substance that assumes a number of forms, is it not ?

A. Yes, sir.

Q. Pearl tapioca is one thing, and flake tapioca is another thing ?

A. Yes, sir.

Q. Are you aware of the fact that there are any other kinds of tapiocas in the world, or in the United States ?

Mr. KNIGHT : I shall object to any evidence tending to show what the commercial designation is out of the United States.

Mr. PAGE :

Q. Any market of the United States, Boston, New York, San Francisco, Portland, New Orleans ?

A. In San Francisco only those two kinds are commercially known.

Q. Are you not aware that there are other classes of tapiocas that go to other ports of the United States?

A. No, sir.

Q. Did you ever in your life hear of tapioca flour, a substance known commercially and imported in the United States?

A. No, sir.

Q. Not San Francisco particularly—under the name of tapioca flour?

A. No, sir.

Q. You have no knowledge outside of the jobbing trade of a grocer in San Francisco?

A. That is all.

Q. The substance which has been shown to you as that in controversy is something you know nothing of, so far as importations are concerned?

A. Not as far as importations.

Q. You have no knowledge of what name it goes under when it is imported by the importing merchant?

A. No, sir.

63 Q. You have no knowledge of what name it goes under in the custom-house?

A. No, sir.

Q. Or how the people that import it enter it?

A. No, sir.

Q. If you want to order a particular kind of tapioca, pearl or flake, from your importing broker or merchant, or from your consignees or agents abroad, do you designate the particular kind of tapioca that you want by saying "I want so much pearl tapioca," or so much flake?

A. Yes, sir.

Q. You never would say "tapioca" alone, because you would not know what you would get?

A. That is right.

Redirect examination.

Mr. KNIGHT:

Q. How widely extensive is the business of Haas Brothers? To what points do you send goods in the course of trade?

A. We go as far north as Washington Territory and California.

Q. How far east do you go?

A. Ogden.

Mr. PAGE:

Q. What is generally termed the Portland coast trade?

A. Yes, sir.

Q. As far as the Missouri river?

A. Yes, sir.

Mr. KNIGHT :

Q. State whether or not you are acquainted with the commercial meaning of the term "tapioca" as it is applied by those in the trade in eastern cities?

A. In eastern cities?

Q. Yes, do you have any dealings with grocers or brokers in eastern ports?

A. We have not.

A. L. WISNER, called for the collector, sworn.

Mr. KNIGHT :

Q. What business are you in?

64 A. I am at present with the Hunt Loom and Fabric Company.

Q. Were you ever in the grocery trade?

A. Yes, sir.

Q. When?

A. Two years, from 1890 to 1892, with Mau, Sadler & Co., wholesale grocers. Four years later with the Johnson-Locke Mercantile Company, commission merchants and importers.

Q. What did the Johnson-Locke Company import? Did they import starches or tapiocas?

A. They imported starch from the Eastern States. They imported no foreign starch.

Q. They imported starch from the Eastern States?

A. Kingsford, Oswego starch.

Q. Was the firm of Mau, Sadley & Co., during the time you were connected with it, in the wholesale grocery trade?

A. Yes, sir.

Q. Did that embrace tapiocas and starches?

A. Yes, sir.

Q. Did Mau, Sadler & Co. do any importing?

A. They did not import tapioca or sago direct. They bought in the original package from other importers. It was taken from the ship, but not imported in their name.

Q. Were you on the 1st of October, 1890, or thereabouts, acquainted with the commercial designation of the term "tapioca," and to what kind of article that term was applied among the importing trade?

A. Yes, sir.

Q. What was the term "tapioca" applied to at that time?

A. To a product similar to that in the styles marked "A, B, C, and D."

Q. To pearl and flake tapioca?

A. Yes, sir.

65 Q. Was it applied at that time in that trade to any other substance than pearl and flake tapioca?

A. Not so far as I know.

Q. Do you know a substance called "China starch"?

A. Yes, sir.

Q. Will you look at the tins that are before you, which is the substance in controversy, and testify whether or not that would be known as China starch?

A. That looks similar to what I have seen designated as China starch by the Chinese importers. I should say it is the same substance.

Cross-examination.

Mr. PAGE:

Q. What department of the business of Mau, Sadler & Co. did you attend to?

A. Salesman, and also book-keeper.

Q. In your duty as salesman and book-keeper was it part of your business to go out among the importers and purchase?

A. No, sir.

Q. So that you personally were not brought into any relations with the importers or brokers?

A. No, sir.

Q. Have you any knowledge of any kind as to what tapioca means in the general trade of the United States, as imported?

A. Tapioca in that sense means a food product.

Q. Did you ever hear of tapioca flour?

A. Yes, sir.

Q. Do you know whether tapioca flour is the article that is now before you which you have testified about?

A. I should say that is what is imported as the tapioca flour. If you would want to buy tapioca flour, that is the product you would get.

Q. That would be so in Boston, New York, and any other port of the United States?

66 A. I suppose so. That is what it is known as in San Francisco.

Q. Supposing you wanted to import that article, your order would be to the American broker, or to the American importing merchant, so much tapioca flour, would it not?

A. Yes, sir.

Q. Tapioca is a generic name for various different forms of the same substance—that is, the pearl tapioca, the flake tapioca, and the tapioca flour?

A. Yes, sir.

Q. Do you know whether there is any other?

A. I never heard of any.

Q. Those are the only three you have ever heard of?

A. Yes, sir.

Redirect examination.

Mr. KNIGHT:

Q. Did you ever hear that substance in controversy commercially called tapioca flour until you heard that term applied in connection with this case?

A. I think I have, although I will not state positively. I have heard before I had any connection with this case that the Chinese did import their starch which was really a product of tapioca, under the name of tapioca flour.

Q. By whom commercially has that term "tapioca flour" been applied? By what class of people?

A. By the Chinese merchants.

Q. Have you ever heard white merchants apply that term to the same substance?

A. I believe occasionally they handle it, and they call it tapioca flour, although it is not a very common product. It is used only by the Chinese.

Q. Did I understand you to testify on cross-examination that the term "tapioca" commercially embraces that substance that is before you in those tins as well as the "pearl" and "flake"?

A. No, sir.

67 Q. Then you correct your testimony given on cross-examination. You were asked whether the term "tapioca" applied to pearl and flake and tapioca flour, and you answered it did. I understand you to say that the term "tapioca" does not apply to the substance in controversy?

A. Tapioca, commercially known, is the "flake" and "pearl," for food products. Tapioca flour is a different substance, which I understand is used for starch, but not in the commercial world as tapioca.

Q. State, Mr. Wisner, whether or not you have gone about among importers to ascertain the commercial designation of tapioca?

A. I have.

Q. And when?

A. At different times when I was in the grocery business.

Q. So you were brought in contact with the importers at the time you were in that trade?

A. Not as a person buying from them, but as a member of that business being brought in contact with other people in the same business, I would see the product and handle it many times. I know that is what is known as tapioca.

Q. You testified with reference to the use of the term "tapioca" and "tapioca flour" by eastern men. You are acquainted with the designation which the eastern men in their business place on that article, are you?

A. Yes, sir.

Q. Will you state whether or not there is any difference in the way eastern men use the term "tapioca" with the way it has been used out here?

A. None that I am aware of.

Q. In the eastern part of the United States the term "tapioca" would embrace pearl and flake?

A. Yes, sir.

Q. Anything else?

A. Nothing.

68 Recross-examination.

Mr. PAGE:

Q. You said a moment ago tapioca was a generic name for the different products of tapioca in their different forms, did you not?

A. I believe I did.

Q. Supposing that any individual came to you and said, "I want to buy so much tapioca," would you be able to give them anything that you knew was what they wanted?

A. I would ask them whether they wanted "pearl" or "flake tapioca."

Q. Then tapioca may be applied generically to a substance which it does not specifically describe. It is not enough for a man to say, "I want tapioca," in order to enable you to fill his order?

A. No, sir. I might fill it right.

Q. But it would be a guess whether he wanted the one or the other?

A. Yes, sir.

Q. In order to fill any man's order for tapioca, he would have to say whether he wanted the pearl tapioca or the flake tapioca?

A. Yes, sir.

Q. Suppose a man came to you and said, "I want so much tapioca flour." What would you give him, this substance in controversy?

A. I would give him the substance there. I would endeavor to obtain that.

Q. If you did not have it you would go out in the market among the importers of Chinese products or Singapore products, and would ask for what?

A. For sago and tapioca flour.

Q. Have you any question in your own mind as to what you would get?

A. I think the product before me is what I would get.

69 Further redirect examination:

A. I should call it more a starch than a flour.

Mr. KNIGHT:

Q. Is that a flour?

Q. Then, according to your understanding of that article, if it were called a flour, is it a correct term to apply to it?

A. I do not think so.

Mr. PAGE: I object to that upon the ground that the question is the commercial designation, and the district attorney has proved by his witness exactly what the commercial designation is.

A. I did not intend to convey the impression that if I was dealing in tapioca I would have to specify further than flake or pearl.

J. A. SAMPSON, called for the collector, sworn.

Mr. KNIGHT:

Q. You are the examiner here connected with the appraiser of this port, are you not?

A. I am.

Q. Your position is officially known as what?

A. Examiner.

Q. How long have you been in that position?

A. Ten or twelve years.

Q. You have been connected with the appraiser's office longer than that?

A. I have been connected with the appraiser's office about ten or twelve years, but with the custom-house about twenty-six years.

Q. State whether or not you are acquainted with the substance which is in controversy, which is enclosed in those tins shown you.

A. I have seen a great deal of it.

Q. By whom is that substance principally imported?

A. By Chinese.

Q. Do you know what the article is?

70 A. I know it as starch. I know it is invoiced as sago flour, formerly as root flour, and occasionally as tapioca flour. Very seldom as tapioca flour.

Q. Are the substances invoiced under those different names, the same or not?

A. To all appearances, so far as I know.

Q. State whether or not that same substance is imported under the invoiced name of rice flour.

A. I never saw it as rice flour. I will say it is possible that sometimes they call it rice flour, but I could not state positively that any of that was rice flour.

Q. During the years you have been connected with the custom-house, and the appraiser's office, how much of this stuff relatively has been imported by white men?

A. I cannot remember of an occasion where it has been imported by white men. I have seen hundreds of Chinese invoices, but I cannot remember it. It is possible that S. L. Jones has imported some, and possibly Mr. Brandenstein. I don't remember.

Q. How much, compared with the quantity imported by Chinese? Any considerable amount?

A. It is so little that I cannot remember it.

Q. Do you know under what name white importers bring this article into this port?

A. As I say, I cannot remember of a white man importing it.

Q. How do those who import the article call it, as far as you know?

A. The invoices call for sago flour. As I said before, several years ago it was nearly all root flour. Nearly all the invoices called it root flour.

Q. Do you know what occasions the changes in the designation of this article?

A. I do not. I only suppose the changes in the tariff. I suppose so.

71 Q. How late a date was this article imported under the name of root flour?

A. I think it was after 1890. You will find invoices after 1890, that it was imported as root flour. I think within three years it has been imported as root flour. I cannot remember it.

Q. Do you remember whether or not there has in the past two or three years been any change in the designation of the article by those who were importing it into this port?

A. No, mostly sago flour, ever since the new tariff.

Q. What I want to get at is this: Have you noticed whether the importers have been calling this article by any different name than that under which they formerly imported it?

A. Oh, yes, I noticed them call it sago flour, and formerly it was root flour.

Q. Do you remember when the term "root flour" was largely dropped, and the term "sago flour" applied to this article?

A. No, I cannot remember that.

Q. Recently?

A. It has been about two years—I cannot remember exactly.

Q. Do you know whether or not the importers call this article "China starch"?

A. No, it is never on the invoices that way. I know this, that the Chinamen tell me it is starch. That is all I know. They never invoice it as starch.

Q. Do you know for what purpose this article is imported?

Mr. PAGE: I object to that, unless Mr. Sampson is prepared to say he has been in the business.

Mr. KNIGHT: Well, I will modify that question.

Q. Do you know whether or not this article is imported for other purposes than laundry purposes by those who bring it here?

72 Mr. PAGE: I object to the question, as it assumes that the witness knows it is imported for laundry purposes.

A. I do not know.

Cross-examination.

Mr. PAGE:

Q. Chinese are very careless in the way their goods are invoiced, are they not, noticeably so?

A. They make mistakes like other people, but no more so.

Q. As far as you know, the substance is always the same substance?

A. Always the same substance.

Q. You do not know whether there is actually a difference between what is called root flour and what is called tapioca flour, do you, or do you look upon them as the same substances?

Mr. KNIGHT: I object to the question on the ground that it assumes the witness knows any substance as tapioca flour.

A. Everything that comes here called tapioca flour is the same as this substance, sago flour.

Mr. PAGE:

Q. How many years has it been since you have known of the existence of the substance designated by importers as tapioca flour—to a greater or less extent—how many years since you have heard that designation *heard* by importers for this substance?

A. I think occasionally it has been used for as long as—in the first place, I cannot remember the time when tapioca flour was used in reference to that flour. I can only say this, that very seldom is it called tapioca flour.

Q. Generally called sago flour or root flour?

A. Generally sago flour now. Very seldom called root flour. There is another article called root flour.

Q. Isn't it very generally called tapioca flour now?

73 A. No, sir, not on the invoices.

Q. Since you have been in the customs department has not the question arisen some two or three times as to whether this article was free by reason of its coming under the tapioca or sago schedule, or whether it was taxable as a starch? Has that not come up in your department, and then been taken to the Treasury Department?

A. It has, several times, as to whether it was starch or not. I do not know as to coming under the tapioca or sago schedule.

Q. You are not sufficiently acquainted with the history of the tariff to know whether it was claimed to be free?

Mr. KNIGHT: I object, as calling for the conclusion of the witness.

A. It was claimed to be free under the name of root flour, years ago.

Q. Tapioca flour and sago flour were free also, were they not, for many years?

A. My recollection of the flour is it was claimed as free under root flour.

Q. Do you know whether the custom house treated it as a substance made from the root of the tapioca plant—the manioc?

A. That has been asserted. I will say this, that I do not know the history of what they supposed it was made from. The only question I had about it was whether it was starch or not.

Q. But so far as you know, from your experience in the custom-house, the commercial designation is not starch, but either root flour or sago flour or tapioca flour?

A. That is the way it is invoiced.

Q. That is the only knowledge you have of the actual commercial designation under which it is imported into the United States?

74 A. Exactly.

Q. You have no knowledge of any commercial designation in the eastern ports?

A. Not at all.

Q. You do not know whether it is imported there at all, do you?

A. Not of my own knowledge, I do not.

Q. From the knowledge you have gathered on the general subject, can you say whether it is a product that reaches eastern ports?

A. I was informed at the time of the first controversy that this was brought into the East in sacks and used by cotton manufacturers, or print manufacturers, as a stuffing, a starch, or sizing. That I was told. I don't know it myself.

Q. You do not know under what designation it comes into those ports?

A. Not of my own knowledge.

Q. But you do not know?

Q. Have you any knowledge acquired from your general reading, or from those with whom you have associated, any knowledge acquired by reason of your position, of the name under which it is imported into the East? Is it not imported there under the name of tapioca flour?

A. I think not.

Q. But what do you know?

A. I do not know that.

Redirect examination.

Mr. KNIGHT:

Q. Have you had occasion to inquire for this article among the Chinese merchants of this city?

A. Oh, yes.

Q. Under what name was this article known among them?

75 A. I asked them if they called it starch; they said they did.

Q. You referred to it, then, as starch?

A. Yes, sir.

Q. State, if you can, what the invoice price of this article have been in the past few years.

A. Somewhere from \$2.20 to \$2.35 a box—80-pound boxes—sometimes as low as \$2.00, but not often.

Mr. PAGE:

Q. Gold or silver?

A. Mexican.

Mr. KNIGHT:

Q. Mexican money is between fifty and sixty cents on the dollar, isn't it?

A. Yes; I believe so. But it has been up to ninety-two within three years, you know.

Dr. CHARLES A. KERN, called for the collector, sworn.

Mr. KNIGHT:

Q. What is your occupation?

A. Special examiner of drugs for San Francisco.

Q. How long have you occupied that position?

A. Two and one-half years.

Q. Will you state whether or not you have made chemical analysis of flours from different cereals and roots?

A. I have.

Q. Does this table contain the analyses you have made (showing paper to witness)?

A. Yes, sir.

Q. Is that correct, as far as you know?

A. As far as I know, it is correct.

Q. And embraces the substances which are set opposite the various analyses?

A. Yes, sir.

Q. You have also made in the same table analyses of various starches, have you not?

A. Yes, sir.

76 Q. Are they correct so far as you know?

A. So far as I know, they are correct. I made them all myself, except one. I have never had occasion to get a sample of that, and I took that analysis out of a pamphlet written by Professor Willey.

Q. Who is he?

A. Professor of chemistry in Washington—chief of the Chemical Department of Agriculture. He stands highest in his profession. I would have made that analysis myself, but I never had a chance to get a sample of the article. In comparison with it, I made an analysis of potatoes.

Q. In all these analyses of starch and flour you found a distinctive difference between flour produced from a cereal or a root and the starch that was ultimately produced from the same cereal or root?

A. Yes, sir; you will find the differences shown in that table, one under the other.

Q. This table embraces an analysis of the substance in controversy, does it not?

A. Yes, sir.

Q. And you found it to be what?

A. I found it to be cassava starch.

Q. Will you state whether or not it is a flour in any way?

A. It is not a flour.

Q. It lacks the gluten of the flour?

A. It lacks the gluten, the fibrous matter, the sugars, and some other similar ingredients, but gives a high percentage of starch.

Q. State whether or not the gluten in the flour is the resisting substance in it when the flour is used for making bread.

A. It is one of the palpable substances in the flour.

Q. Composed of nitrogenous matter?

77 A. Yes, sir. The starch lacks it almost entirely.

Q. Gluten is a sort of gum?

A. A combination of different organic substances. It is chemically not clearly determined yet, but it has some physical appearances which make it differ from starch.

Q. And the different elements which form the gluten, taken together, form a sort of gum?

A. They form a sort of gum, yes.

Q. Is that insoluble in cold water, or soluble?

A. It is insoluble in cold water.

Q. And is one of the most nutritive elements in the flour?

A. Yes, sir, undoubtedly.

Q. Now, is that gluten a characteristic of all flours—that is, flours from cereals and roots?

A. Gluten is found more in cereals than in roots.

Q. Is it contained in the flour made from the potato?

A. Very little.

Q. Well, is there practically any flour made from the potato?

A. There is, in Europe, and I have made it here in small quantities.

Q. Is gluten absent from all starches?

A. It ought to be absent from all starches.

Q. Do you know for what purpose the substance in controversy is suitable?

A. It is suitable to use as starch.

Q. For what purpose in particular?

A. For laundry purposes.

Q. Anything else than laundry purposes?

A. You can use starch for everything, laundry purposes, eating purposes, and to make alcohol.

Q. Is it used for sizing purposes?

A. Yes, sir.

Q. Is starch used in paper?

78 A. Yes, sir.

Q. In the manufacture of paper?

A. Yes, sir, and used for pasting purposes.

Mr. PAGE:

Q. It is used for making paste too?

A. Yes, sir.

Mr. KNIGHT:

Q. It is a very useful thing?

A. Yes, sir.

Q. It goes into nearly everything?

A. Yes, sir.

Q. Have you had occasion, Dr. Kern, to ascertain what the commercial designation of that article is?

A. I never did hear in the market, only what I got on the invoices.

Q. What does your knowledge of the invoices of that article disclose? I will withdraw that question. (Addressing Mr. Page :) There will be no objection to the identification of the invoices?

Mr. PAGE: No.

Mr. KNIGHT:

Q. I will ask you with reference previous to the time that this particular article was imported, what was it called upon the invoices?

A. It was about two years ago called nearly always root flour; some sago flour, and sometimes simply flour. Afterwards it was called sago flour nearly always, a few scattering times root flour, and very seldom tapioca flour, and once in a while simply flour.

Mr. KNIGHT: I will offer in evidence, if I have not already done so, the table which the witness has prepared containing the analyses of various starches and flours.

(Marked "Exhibit.")

Q. You have used in this table the term "tapioca flour." To what specific article did you intend that term to apply?

79 A. To cassava starch—all these last articles here; three analyses of tapioca, and four of root flour are the same character of starch as shown by the microscope.

Q. How do you subdivide it in that way—for what purpose?

A. These names there are only taken from the invoice which the samples are marked. It does not give the real name of the article itself.

Q. The names you have used are sago flour, 1, 2, 3, and 4; tapioca flour, 3 samples; root flour, 4 samples. Those are the names that are applied to the articles analyzed from the invoice?

A. Yes, sir.

Q. Regardless of any other commercial use?

A. Yes, sir, only of the character of cassava starch.

Cross-examination.

Mr. PAGE:

Q. Where did you get the name "tapioca flour"? Did you come across that in any of your own researches?

A. My researches in the laboratory in the appraiser's office.

Q. It is an article known to commerce, and recognized in the books that a scientific man studies, is it not?

A. No, sir. I heard it the first time when I came in this office here.

Q. Did you not say a moment ago that you came across the name "tapioca flour" in the laboratory, in your researches?

A. I came across it upon the invoices.

Q. You only know of the words "tapioca flour" from the invoices?

A. Yes, sir; first from the invoices.

Q. Did you ever look into the American Dispensatory?

A. Yes, sir.

80 Q. Did you not find this article referred to in that as tapioca flour, and the article commercially known as tapioca flour?

A. I only saw the name "tapioca" on it.

Q. Did you see the definition, or the description of the article in controversy, as shown to be a flour of tapioca?

A. I have not seen it.

Q. You did not notice it?

A. No, sir.

Q. This article in controversy is really the first precipitation of the starch from the root, is it not?

A. I do not know if it is the first or second. It is a highly clear starch from the root. I mean, starch separated from the rest of the substances, like fibre, and albumenoids.

Q. The article in the glass bottles—do you know what it is? Pearl and flake tapioca?

A. I have not tested those.

Q. They are pearl and flake tapioca. They are food products entirely?

A. They are.

Q. The consumption of pearl and flake tapioca is solely for food purposes?

A. Yes, so I hear. I never heard of it for any other purpose.

Q. The other article and substance that is in controversy here, and which you say is a starch, enters largely into all the arts and manufactures?

A. Yes, sir.

Q. That is to say, its use is much more varied than the use of pearl and flake tapioca, which are merely for edible purposes?

A. Yes, sir.

Q. Your knowledge of the article in controversy is confined entirely to the results of your laboratory work?

A. Generally; yes, sir.

81 Redirect examination.

Mr. KNIGHT:

Q. Have you had occasion to deal in this article, or ask for this article commercially from those who are in the trade?

A. No, sir; I never had occasion to.

Q. Did you ever go through Chinatown in quest of this article, or information concerning this article?

A. I am sorry I never did.

Q. This article in controversy, starch, is also used to some extent for food?

A. Any starch could be used as food.

Q. Only it is not as nutritive a food as flour?

A. It would not be advisable to use starch rather than flour.

Q. It has not the nutritive element; it simply has not the nutritive element which flour has?

A. It has not the nutritive qualities of flour.

Q. Do you know whether or not the substance that is left after this starch is made from the cassava root—that is, the fibre and the ash, and various other elements, are used for any other purpose?

A. I do not think they are used in those countries for anything else.

Recross-examination.

Mr. PAGE:

Q. The amount of nutrition that can be obtained from the substance in controversy is just the same as the substance known as pearl tapioca and flake tapioca?

A. Yes, sir.

Q. It is the same article, only a change in form?

A. It is only a change in form.

Q. It is purely a question of taste whether a person wishes to buy the pearl or flake, or wishes to buy what we call the powdered tapioca for edible purposes?

82 A. Yes, sir.

Q. It is merely the question of choice of form. The same amount of nutrition in one is in the other?

A. About the same amount.

Further redirect examination.

Mr. KNIGHT:

Q. Doctor, have you been answering those last two or three questions carefully? See whether or not you intend to testify as you have. Do I understand you to say that the only difference between the substance in the tins and bottles is merely one of form? Is it merely one of form? Has one been subject to any additional process that the other has not?

A. Yes, sir; it has changed in some substances——

Q. You have to designate these by their names. You cannot say "here" or "there." Refer to these as A, B, C, and D.

A. We will call it pearl, and flake, and starch. I was referring to the flour direct from the root, and not to the starch.

Q. Are you referring to the articles in the tins?

A. Yes, sir.

Q. State whether or not the article in the tins is the same substance as the article in the bottles, or whether the article in the tins has been subject to any additional process to produce the article in the bottles.

A. Yes, but I was not asked that question.

Q. State how it is.

A. It is wetted and heated on plates, and rolled, so part of the starch is transferred to a kind of gummy matter.

Q. State whether or not the article in the bottles, the flake, con-

tains the same amount of starch as that in the tins, or has some of the starch been liberated.

A. Some of the starch has been changed in gum.

83 Q. Would you say, then, that the article in the tins was the same substance as the article in the bottles, with only a change of form?

A. No, sir; I would not say that.

Q. Then you wish to correct your testimony in that respect?

A. It is only changed by a manufacturing process.

Q. It is only changed by an additional manufacturing process?

A. Yes, sir.

Q. If you should put the article in the bottle in powdered form, would it be the same as the article in the tins?

A. No, sir; it would not.

Further cross-examination.

Mr. PAGE:

Q. What would be the difference? There would not be quite so much starch?

A. Not quite so much starch.

Q. Is it not a fact that the pearl and flake tapioca is made by subjecting the article that is precipitated from the fibre of the manioc root to a little greater heat, and that the effect of the heat is to break the outer cuticle and release a little of the gummy substance, and the rolling brings together the particles so that they assume the form of pearl and flake?

A. That is the manufacturing process.

Q. And the only difference between the two articles is that one has been baked a little longer than the other, and that the breaking of the outer cuticle by reason of the additional heat has caused the release of the gummy matter, so that when the particles are rolled together they take either the form of a pellet, which is the pearl, or of the flake, which is larger?

84 A. Not exactly; it is quite different. The starch in the tins is made by wetting, and if you apply heat to it, this starch takes so much water off, and goes into a kind of gum, expands. Then the water evaporates and leaves the pearl and flake tapioca, with the changed starch in it.

Q. Take the substance in controversy here, which we call the flour. How is that made?

A. This is made by grinding the root and washing the starch in the root out.

Q. That is simply turning water onto the finely ground root?

A. By getting the fibre, and washing out the fibrous substance.

Q. That leaves the starch at the bottom?

A. Yes, sir.

Q. For the purpose of making the pearl and flake tapioca, is not that process gone through to begin with, the same process only an additional process afterwards?

A. It is an additional process afterwards.

Q. The same process is gone through with as with the flour up to a certain point. Then afterwards the additional heat is given to it which breaks the outer *circle*, liberates a little of the gummy substance, and then the rolling comes in, and it assumes the form of either pearl or flake, as they want to make it?

A. But not without changing a part of the starch.

Q. That is to say, the breaking of the cuticle liberates a certain portion of the gummy substance, and takes away so much from the starch in the article itself. Is not that the only difference?

A. No; part of the starch is changed in it through the heat.

Q. Is a new substance produced, or is it an old starch?

A. Part of a new substance.

Q. What do you call that?

85 A. A kind of gum.

Q. Is not this article that is in the tin can before you, which we call the tapioca flour, also used in the arts on account of its gummy substance?

A. Not on account of its gummy substance; on account of the starch forming a kind of a gum.

Q. This article in the tins has the same amount of gum as the article known as pearl and flake tapioca, practically?

A. No, sir; it has not.

Q. Why not?

A. On account of this being changed in the heating process.

Q. Some of the gum disappears by reason of the heating process?

A. Some of the gum is produced by reason of the heating process, out of the starch.

Q. Then the gum is produced at the expense of the amount of starch in the article?

A. Yes, sir.

Q. And the only difference between the two articles, pearl and flake tapioca, and flour is, that when it has reached the stage of pearl and flake tapioca, the article has more gum and less starch. That is the only difference?

A. Yes, sir.

Q. Besides the form?

A. Besides the form.

Mr. KNIGHT:

Q. And then becomes a substance used entirely for culinary purposes, so far as you know?

A. So far as I know, yes, sir.

Mr. PAGE:

Q. Does the additional heating that the pearl and flake tapioca go through deprive the starch of nutritive qualities, or does it still retain the same amount of nutritive quality as it does in the form of what we call powder?

86 A. That actually I do not know.

Q. Practically it must be the same?

A. Yes, sir.

Further redirect examination.

Mr. KNIGHT:

Q. One further question: In the various uses to which starch is put, either for laundry purposes or making candy, such as gum-drops, or in sizing cloth, is the starch used in the form in which you have it now, in the tins, or is it put through the additional heating and other processes to which the starch is put, to make tapioca, pearl or flake, and then used for the various purposes to which starch is put?

A. No, sir; it is used before heating.

Q. In other words, it does not go through the process to which pearl and flake tapioca is subject, in order that it may be used in the various ways in which starch is used?

A. It does not go through that.

Further recross-examination.

Mr. PAGE:

Q. Ordinary starch, such as you would buy in the stores and places of that kind, is that used in the confectionery business? Or we will say, if you go into a store and ask for starch, and do not tell them what you are going to use it for, and they take for granted that you are going to have your clothes washed with it, would that be as good for use in cooking as the article you have described as being the pure starch, precipitated from the manioc root by washing and which is in the tin before you?

Mr. KNIGHT: I object to the question upon the ground that it does not appear what starch is designated in the question. It does not appear that the witness has had any experience in inquiring for starch, or knows what kind of starch you are making a comparison about; and further, that the testimony tends to show that there is a starch used for laundry purposes made of the same article that makes a starch, and a finer starch used for culinary purposes.

A. What do you call ordinary starch?

Mr. PAGE: I will repeat the question. If you went into a store and asked for starch, and the seller took it for granted that you wanted starch for washing purposes would that be as good for use in confectionery, or in the other use to which the article before you is devoted, as that article itself?

A. How can I tell you, except I know what is in it. There is potato starch suitable for laundry purposes, but not suitable for eating purposes, on account of some certain bitaste which would make it not suitable for eating purposes, for confectioners' use, but just as good for laundry purposes.

Q. How would it be with wheat starch?

A. If it is pure and good it would be all right for eating purposes; for confectionery purposes, I mean.

Q. Do you know what starches the confectioners generally use for their purposes?

A. So far as I have heard they use corn starch.

Q. Do you know whether they use this substance in controversy at all?

A. I do not know; I never heard of it.

THOMAS PRICE, called for the collector, sworn.

Mr. KNIGHT:

Q. You are a chemist, are you not?

A. Yes, sir.

Q. Analytical and otherwise?

A. Analytical and a general chemist.

88 Q. You have been engaged in that business for how long?
A. About forty years, more or less.

Q. You have made an analysis of various flours and starches?

A. Yes, sir.

Q. Have you the result of the analyses with you?

A. Yes, sir; the result of certain analyses that I made from samples which I took myself, or assisted in taking at the appraiser's store, on June 25, 1895.

Q. Where did you get those samples?

A. I took them at the appraiser's store myself. I saw that they represented the case and number that you will find on each of those bottles. They have been in my possession ever since.

Q. The appraiser gave you the samples?

A. Yes, sir; he pointed out the boxes, and these represent the invoices he showed me.

Q. Did you find the substance in controversy designated under these various names to be a flour or starch?

A. With the exception of one sample marked "rice flour," it is all starch.

Q. In speaking of this substance, we will except the rice flour. We are not particularly interested in that.

A. Very well.

Q. And you found none of it flour?

A. No, sir; I did not find any flour.

Q. What did you find further, Professor, on your analyses of these various substances, except the rice flour?

A. I found from both the chemical analyses and the microscopic examination, that they were pure starches.

Q. Can a flour, as the term "flour" is commercially used, be made from any of the substances, or be produced from the plant from which the substance in controversy is produced?

89 Mr. PAGE: I object to the question upon the ground that the witness is not an expert on what a thing is commercially, and is called on to prove what a thing is chemically.

A. A flour can be produced from any of the starch-producing

compounds, but I found all these materials, with the exception of the starch, would come within the designation of the word "starch" rather than "flour."

Mr. PAGE :

Q. A chemical designation of the word "starch" ?

A. From my own practical knowledge of flour.

Mr. KNIGHT :

Q. These samples, with the exception of the rice flour, are practically free from oils, fats, resins, albumenoids, and other substances which you find in flour, save the starch ?

A. Yes, sir ; they are free from all the materials that are to be found in flour, that is, produced in the flour, excepting the starch from cereals and roots ; they compare with the starch contained, and not with the flour that would be produced.

Q. What is a flour, we will say, chemically ?

A. I do not think there is any difference between a flour chemically and practically. The flour is any pulverized material. Take as an illustration wheat flour. Wheat flour is simply the grain of the wheat taken and pulverized into an impalpable powder, with the exception of what is called the bran. Even at the present day, with the roller flour, as it is called, that is ground in.

Q. We have a flour from wheat, and we have a starch from wheat, do we not ?

A. Yes, sir.

Q. Is not the starch of the wheat made from the flour of the wheat ?

A. It may be made either from the flour or direct from the grain, without passing into any intermediate operation, converting it into flour first.

90 Q. It is the extraction by solution of all glutenous matter, fibres, albumenoids, and everything of that sort, is it not ?

A. Yes, sir.

Q. Practically the same process is used in the manufacture of a starch from the flour that is made from rye, is it not, or from the cereal ?

A. Yes, sir.

Q. That is, it is the resultant of a solution ?

A. The result of a partial solution.

Q. We have a starch and we have a flour from the rye, so we have it from most cereals ?

A. We can make a starch from any cereal and roots and bulbs ; in fact, we may say, nearly all vegetable compounds contain more or less starch ; both animal and vegetable.

Q. There is a well-defined distinction ordinarily and chemically between a flour and a starch ?

A. I have always so understood it.

Q. In the case of a root you can have a flour and you can have a starch, can you not, from the same origin ?

A. Yes, sir.

Q. State whether or not there would be the same relative chemical distinctions between the starch and the flour from the root that there is between the starch and the flour from any cereal or any other root.

A. Yes, sir; all starchy compounds from which flour can be made contain different quantities of starch, and in the manufacturing of starch; that is, from the grain or from a bulb, or from the pith of a tree, the operation is precisely the same, namely, elutriation with water and filtering with or without pressure, so as to remove the glutenous and fibrous material, as well as the soluble inorganic matter, and the starch being held in suspension in the water, then
91 being allowed to stand for some time and the water decanted or siphoned off from the starch which has settled in the bottom of the vessel, and the material dried.

Q. It is that which settles in the solution, and then the water is drawn off?

A. Yes, sir.

Q. I understand you, the process of making starch is practically similar?

A. Yes, sir.

Q. In all cases?

A. Yes, sir. The only variation is in the various quantities of other compounds than starch that are present in these various substances from which starch is extracted.

Q. The only further difference would be the use of the particular solvent to draw the starch from the other elements in the flour?

A. Yes, sir. Sometimes caustic soda is used to remove some of the ingredients in order to render the starch pure.

Q. Would the same thing apply to the manufacture of the cassava starch?

A. Yes, sir; they all have to be more or less purified.

Q. As far as you know, is there a commercial distinction made between wheat flour and wheat starch?

A. Yes, sir.

Q. Did you ever hear of wheat starch called wheat flour?

A. No, sir.

Q. Nor *vice versa*?

A. No, sir.

Q. Take flour and starch produced from those cereals and roots. Do you know of the term being used interchangeably, the word "flour" applied to starch, and the word "starch" applied to flour?

A. Yes, sir. Take sago meal; I never heard of a sago flour, but there is a sago starch and sago meal.

Q. You do not hear the term "sago meal" applied to the sago starch?

A. No, sir.

92 Q. Or *vice versa*?

A. No, sir. Then the cassava meal and the cassava starch are different substances. Cassava root, after being dried and pulverized into powder, is called cassava meal. As an illustration, take the cassava root and compare it with a potato.

Q. Why do you make that comparison?

A. Not with a potato, but with flour. For instance: when the grain of wheat is taken and ground into an impalpable powder, without any other treatment other than that mechanical treatment, you get the flour. It contains all the starch as well as all the albumenoids and the fibres and the husks excluded, in the same way that the cassava root when dried is also ground up into a powder, and converted into bread; and that simply would be the cassava meal.

Q. Which corresponds to the flour?

A. Yes, sir.

Q. And would be produced from cereals?

A. In the same way if I take and treat the wheat again, in order to get at the starch, I have got to mix that with water so as to get rid of the gluten; and finally, all the other materials have been separated out except the starch, which is held in suspension in the water, and settles. The same operation has to be gone through in order to separate the starch from the cassava root. The only difference is that the cassava root contains a larger percentage of starch than wheat. That is to say, after it is dried.

Q. Then you have a substance that is made from the cassava root, a cassava meal, which corresponds to the flour, and the starch, also?

A. Yes, sir.

Q. The starch is made from the meal?

A. It can be made from the meal, but not necessarily.

93 You can go on and separate that before it is converted into a meal, in the same way as you can by the use of the wheat. You get the starch without first converting it into flour.

Q. Is the term "cassava meal" as far as you know, applied to the starch from the cassava?

A. Not that I know of.

Q. Or *vice versa*?

A. It could not be used, because the other ingredients would have to be removed before. Flour could not be used for the purpose that the starch is used in its unpurified or unworked-up state. It would not be fit for starch purposes.

Q. Then you find the same characteristic differences between the starch from the cassava and the meal that you find between the starch and flours from other cereals and other roots?

A. Yes, sir.

Q. What are the characteristics of starch?

A. The characteristics of starch are, it is a unique substance. All starches bear about the general characteristic, only it is insoluble in cold water, but soluble in hot water to a certain extent, and forms a gelatinous compound when it has once been rendered in solution in the act of cooling.

Q. In the manufacture of the starch from the cassava root, where the meal has been taken and has been reduced to a starch by a solution, what becomes of the fibrous and other matter that is left?

A. It is disposed of in two ways: One remains behind on the filter, and contains the nitrogenous principle; and the other passes

into solution, and the starch settles after a little, and goes right through. The best way is to describe the operation of making starch from cassava. Then it is understood. The first operation is
 94 to rasp it or grind it into an impalpable powder. It is then placed in sacks and saturated with water, and there subjected to pressure—mechanical pressure. In that operation the starchy material all passes away mechanically, mixed with water. The gelatinous matter that may be there, the albumenoids, as they may be termed, the husks, and other insoluble impurities remain behind in the sack. Then that solution is treated with a little caustic soda in order to remove further impurities, and the water, after settling for several days, is decanted off, the starch in the meantime having settled to the bottom. After having been thoroughly washed, the starch is then dried.

Q. What becomes of the material that is left upon the filter?

A. It is fed to cattle.

Q. Is the starch bleached?

A. Sometimes. The bleaching is produced by an act of the soda, and is really a bleaching operation.

Q. State whether the resultant of that operation is the substance in the tins which are shown you (pointing).

A. Yes, only it has been pulverized.

Q. The substance has been pulverized to produce this article?

A. Yes, sir; it generally comes out in hard, solid cakes, and then ground to an impalpable powder.

Q. What does that become, then, if you are acquainted with the commercial designation of the term applied to it?

A. The starches are simply put up into various forms.

Mr. PAGE:

Q. That is not the question. Has it got a commercial designation when it reaches that point?

A. Yes; I should call that pulverized starch.

Q. Has it got a commercial designation; not what you would call it?

A. I could not tell you. I only say, if these are the samples I had, that is pure starch.

95 Mr. KNIGHT:

Q. Are you acquainted with tapioca, as it is commercially known?

A. Yes, sir.

Q. In this market?

A. Yes, sir; I use it in my house.

Mr. PAGE: Do you mean in San Francisco, or the market of the United States?

Mr. KNIGHT: The American market.

A. I am only acquainted with it in San Francisco.

Q. What do you know that substance to be, commercially?

A. A tapioca is a compound prepared from the various starches, and it is made in the following manner: That is, in order to put it in the various shapes that it comes, in commerce, the starches are

taken and moistened more or less, and then dried on iron sheets or iron plates, by which operation it gets into the various forms, lumpy or granular, just according to the amount of heat they have, and according to the amount of mechanical manipulation it has been subjected to afterwards. Tapioca can be made from all the starches. It is made from potato starch, largely.

Q. What is the mechanical difference between tapioca and the starch from which the tapioca is made?

A. There is no difference, except in the mechanical treatment it has been subjected to afterwards.

Q. Does the tapioca contain as much starch as the starch from which it is made?

A. Yes, sir; about the same. The only difference would be simply if in this mechanical preparation I have now described of heating it upon iron plates, if it has been overcooked or burned somewhat, of course there would be some of the decomposed matter. But properly prepared, tapioca would have no difference, except in its mechanical form.

96 Q. Tapioca has been subjected, among other things, to a process of heating; that is, the little starch granules which are in the starch which is being made up into tapioca, become bursted?

A. Yes, sir; the corpuscles have become bursted.

Q. State whether or not some of the starch has then been liberated from those corpuscles after they have become bursted.

A. It is liable more or less to be decomposed.

Q. Now, Professor, is it not a regular part of the manufacture of tapioca that the starch corpuscles, or the granules, should become bursted?

A. Yes, sir.

Q. And that a part of the starch should be liberated before the process of the manufacture of tapioca has been completed?

A. That is the way I always understood it, and it is the method described by all the authorities.

Q. What becomes of the starch that is liberated?

A. It does not destroy the starch.

Q. What becomes of the starch that is liberated?

A. It is still starch.

Q. Is it drained away, or lost?

A. It is not lost. It is still there. When you take ordinary starch like this, you just simply get it into solution.

Q. If you pound this sample in any of these four bottles, A, B, C, and D, down to the same degree of fineness that is represented by the starch in controversy in the tins, would the substance be the same?

A. Yes, sir; no material difference in them, except so far as they have undergone a change in the mechanical treatment.

Q. What would that change produce?

A. It would simply be liable to change some of the starch, into some of the other commodities, like dextrine.

97 Q. Would you have any gummy substance?

A. Yes, sir; all those gummy substances are dextrine.

Q. You would have dextrine and other gummy substances in the tapioca that you did not have in the starches from which the tapioca was made?

A. Certainly.

Q. That, if pounded down, would not be the same article chemically?

A. It would be the same, except with those changes, by the chemical treatment.

Q. Do you find the term "tapioca" applied to any other article than the terms "flake and pearl tapioca"?

Mr. PAGE: I object to the question upon the ground that the witness is not an importer.

A. No, sir; I do not know of any other. That is the only form in which I have seen it.

Mr. KNIGHT:

Q. I understand you to say that all tapioca is not made from the cassava root?

A. No, sir; tapioca is a starchy compound manufactured from any other good starch by moistening it slightly, and drying it afterwards on iron plates.

Q. Can you name any of the substances from which tapioca is ultimately made?

A. It is made largely from sago starch, and from potato starch, probably. That is probably the largest material from which it is made today. In order that my answer may be more intelligible, if I do not volunteer, I will say how I arrived at that fact, whether it is potato starch or wheat starch. I will say it is simply by the appearance, and the size of the corpuscles when examined under the microscope. We can then designate whether that has been prepared from a wheat starch or a potato starch, or a cassava starch, or a sago starch—by the appearance of the corpuscles.

98 Q. Will you state whether or not the terms "cassava" or "cassady" are identical, or synonymous, rather, and whether or not they are applied to the root from which starch in question has been made?

A. I know that the cassava tree is a bulbous tree. I have never been able to find any place where it is called cassady. I expect it must be some other language than the English language, because I have been unable to find it.

Q. Then the term "cassava" is applied to a root or tree?

A. Yes, sir; a bulbous root, the tree of which is about five or six feet in height, and which has got four to eight bulbs, varying from six or seven inches to eight inches in diameter, fourteen in length.

Cross-examination.

Mr. PAGE:

Q. Taking the substance in controversy here which is in the tin

cans, and of which you have made an examination, that is the product of the manioc plant, is it not?

A. Yes, sir; the microscope shows all these compounds have, with the exception of the starch, the well-known, characteristic corpuscles of the cassava starch.

Q. Taking that same substance, and before it had been pulverized, as you think it has been, it would only need the additional baking that you speak of to turn it into the pearl and flake tapioca which is in the bottle here?

A. Yes, sir.

Q. That is the only difference between them?

A. That is the only difference between them.

Q. And to reduce back the pearl and flake tapioca into the pulverized form would produce no difference in the article other than the fact that in the additional baking some of the cuticles had been broken and a little of the starch turned into a gummy substance?

A. Into dextrine.

Q. In every other respect the article would be still organically the same?

A. Yes, sir; but you would have to remove that gummy material.

Q. In order to remove it for starch purposes?

A. Yes, sir.

Q. It would not be so good for starch purposes, as it is in its original condition?

A. No, sir.

Q. Practically the condition of the pulverized article in the tin boxes is the first precipitation of the starch. It is the first operation?

A. It may be; yes, sir.

Q. What is the use, generally, of the article in its first precipitation? Is it used in the arts generally, in the manufactures?

A. All starches are used for various purposes. One of the purposes which it is being used for is for the conversion into what you call glucose. Another of the purposes it is used for is for making what you call starch sugar; and another of the purposes for which it is used is conversion into dextrine. Dextrine is a gummy material. It is the material which we use largely for gum. For instance, as a substitute for gum and all its various purposes. It is dextrine that is used on postage stamps.

Q. Generally speaking, there are a great many uses to which the article is put, in the condition in which you find it in the tin boxes here?

A. Yes, sir.

Q. For manufacturing purposes?

A. It is used in printers' ink. Bookbinders use it largely. It is used largely in the manufacture of paper. I think there is a recent application of it also for a filling in painting. When you want to put a transparent paint on wood, you give it a

kind of a filling which is largely made up of starch mixed with linseed oil.

Q. In all your reading and examination scientifically of the article in controversy—that is, the article that is in the tin cans, have you ever come across the fact that it is of universal use for laundry purposes?

A. Yes, sir.

Q. That it is of universal use for laundry purposes?

A. I do not know about universal. I know it is used.

Q. In San Francisco?

A. I know it is used, and I know it will answer the purpose for laundry purposes.

Q. All starches will do that?

A. Yes, sir; only some starches are better than others and the mixture of starch that some people are in the habit of using. Some say they want to get one, and some the other.

Q. In looking into the question of the product of the tapioca plant have you come across in your scientific reading, the fact that commercially the product of the tapioca plant is used for laundry purposes?

A. I had not understood that there was a tapioca plant.

Q. A manioc plant?

A. That is the cassava.

Q. The same as the cassava. In your examination or in your reading, outside of mere knowledge of what happens in San Francisco, have you found that the article in controversy here is used for laundry purposes?

A. No, sir; I have not, in all my experience.

Q. Its universal use is for other purposes in commerce, so far as you have known, except the local use in San Francisco?

101 A. Yes, sir.

Q. For edible purposes, Professor Price, the article in its powdered condition could be used just as well as the flake or pearl tapioca, could it not?

A. No, sir. I did not make that experiment myself, but I gave that to my cook to do. I simply said, "Make me a tapioca pudding out of that." He makes very good tapioca puddings, and he said, "I cannot make tapioca pudding out of that; it is only fit for starch."

Q. Was he a Chinese cook?

A. Yes, sir. That is my only experience in that line.

Q. From a scientific standpoint, knowing exactly what the substance is, is there any reason why the substance in the tins should not be as edible as the substance in the form of pearl and flake tapioca?

A. I can only answer that question by saying, "I know now what the trouble was in the instance I have mentioned, that it is necessary to have a certain quantity of this dextrine in order to hold it together, and not absorb too much water."

Q. And that is the only difference?

A. Yes, sir.

Q. In the matter of form, so far as the article itself is concerned, it is exactly the same for the purpose of eating, but not so convenient in making it into an edible article?

A. Yes, sir.

Mr. KNIGHT:

Q. Is that so?

A. When you come to the eating, I suppose it is a matter of taste whether you eat starch without the dextrine in it, because all these materials anyhow are not nutritious.

Q. It is a matter of form, I suppose, whether you eat dirt.

102 A. Any of these compounds are not nutritious, because they are only carbon hydrates, and it does not add to the strength. No food is good unless it contains some nitrogenous substance for actual purposes of diet. There is practically no difference, because you have not added any new material to it. You have only rendered it into a condition more suitable for cooking because the same ingredients are there. It is true they have changed form, but they do not add to its nutriment.

Mr. PAGE:

Q. They did not add or take away the nutritive power?

A. If you take raw beef it is more nutritious than to cook it.

Q. Have you ever heard in your life of an article called tapioca flour in commerce?

A. No, sir; I have never heard of tapioca flour in commerce.

Q. Have you ever heard of potato flour?

A. No, sir; I have never heard of potato flour except when properly cooked, you say, "That potato is well floured."

Q. Did you ever hear of chestnut flour?

A. No, sir; I never did.

Q. The term "tapioca" is the generic name applied to the product of the manioc plant, and also as you say, to the product from the starches and other plants?

A. Yes, sir.

Q. Is it not a fact that the tapioca that is commercially sold, but is actually prepared from the potato starch, is a spurious tapioca—recognized as a spurious tapioca?

A. I do not know. I have never heard it so expressed. I cannot see why it should be.

Q. Take the American Dispensary. It defines tapioca as the product of the manioc plant, or the cassava plant, whichever you choose.

103 A. Yes, sir.

Q. I think the American Dispensary speaks of a substance being sold commercially in the market, which is spurious, made up from the potato starch, as tapioca.

A. Yes, sir.

Q. I suppose that would be really true, because tapioca would naturally and properly be termed the product of the manioc plant, or the tapioca plant as it is sometimes called.

A. Both the sago starch and the cassava starch and the tapioca made in Germany from potatoes are always considered an inferior article. I have always supposed that was the case on account of the difficulty of separating some of the glutinous material that is present in the potato, giving a darker colored material.

Redirect examination.

Mr. KNIGHT :

Q. Is the term "tapioca" sufficiently generic to include the preparation in any other form but pearl and flake?

A. No, sir; I do not consider it is.

Q. In the manufacture of pearl tapioca has not that substance in the tin been put through an additional process besides the process of heating? In other words, has it not been subject to an attrition in a barrel, or some instrument which gave it the pearl shape?

A. I am not informed upon that subject. All I know about it is, the details of manufacturing the starch, and then its conversion into these various forms for cooking purposes.

Q. Into the flake form?

A. Yes, sir.

Q. The starch sugar that you referred to is the sugar used by confectioners?

A. Yes, sir; and what gumdrops are made of.

104 Recross-examination.

Mr. PAGE :

Q. Do you speak of the term "tapioca" chemically, or do you speak of it commercially?

A. I am speaking of it from an industrial point of view. The details connected with the manufacturing and the conversion of these spurious starches for various purposes. There are local commercial names for such substances which have no bearing whatsoever upon the matter.

Q. Now, take tapioca. It is converted into a substance that is called pearl tapioca, is it not?

A. Yes, sir.

Q. Also into a substance that is called flake tapioca?

A. Yes, sir.

Q. Could not the tapioca be converted into a substance called tapioca flour, of which you have no commercial knowledge?

A. I expect if you take this pearl and grind it up into an impalpable powder, you might call it a flour.

Q. What I want to get at is, in your point of view, the mere use of the word "tapioca" does not tell you anything, except that it is the starchy product of certain plants?

A. I could not say anything about what it came from until I would make an examination under the microscope. Then only I could form an opinion.

Q. Having made your examination under the microscope, and

having found that it is the product of the cassava root, that would not tell you whether it was the article known as pearl tapioca or the article known as flake tapioca?

A. No, sir.

Q. Or anything else?

A. No, sir.

105 Q. All you would know is it was tapioca?

A. Tapioca, and whether it is pure by not finding anything under the microscope.

Further redirect examination.

Mr. KNIGHT:

Q. Mr. Page has used the term "tapioca," and the manufacture of pearl and flake from tapioca, apparently adopting his conception of the meaning of that term. Do I understand you to refer to the tapioca in that sense—that is, are you referring to the tapioca in any other sense than in the sense of the pearl and flake tapioca?

A. That is all.

Q. You are not referring to the starch from the plant as tapioca, but rather to the manufactured article?

A. To the manufactured article made from pulverized or flaky material in a finely divided state.

Further cross-examination.

Mr. PAGE:

Q. Then the product of the manioc plant, when the starchy substance is released, in your judgment is not tapioca at all?

A. No, sir; it is starch.

Q. It is purely starch?

A. Yes, sir.

A recess was here taken until 2 o'clock p. m.

Afternoon session.

CHARLES C. LEAVITT, called for the collector, sworn.

Mr. KNIGHT:

Q. You are a custom-house broker, are you not?

A. Yes, sir.

106 Q. Of merchandise?

A. Yes, sir.

Q. A broker for the importers of what article of commodity?

A. For importers of various lines of merchandise, tea, dry goods, liquors.

Q. Any starches?

A. Very seldom.

Q. Or tapiocas?

A. No, sir.

Q. How long have you been engaged in that business?

A. In the broker's business?

Q. Yes.

A. About eight years.

Q. Have you been a broker for any importer of starches or tapiocas?

A. No, sir.

Q. You were in the Government employ, in the customs service prior to your being a broker, were you not?

A. Yes, sir.

Q. For how many years?

A. About eighteen years.

Q. Are you acquainted with the commercial use of the term "tapioca" among those who are importing the article?

A. I cannot say that I am.

Q. Were you acquainted with the commercial use of that term among the importers when you were in the customs service?

A. Yes, sir.

Q. Will you state to what article commercially when you were in the service the term "tapioca" was applied; whether it was applied to any other article than pearl and flake tapioca?

A. I do not know that the term was applied commercially to those articles.

107 Q. To what articles?

A. Pearl and flake tapioca.

Q. To what did you understand the term "tapioca" was commercially applied?

A. I do not know that I understood your question first, exactly.

Q. I wanted to know to what article when you were in the service the term "tapioca" was commercially applied.

A. It was applied to flake and pearl, and granulated tapioca.

Q. Look at the substance in the box marked "E," and testify whether or not that is the granulated tapioca to which you refer.

A. Yes, sir. Sometimes the granules were a little smaller, but in that form.

Q. Were you acquainted with the substance in the tins which are samples of the substance in controversy, when you were in the customs service?

A. I was at that time, but not since. That was some ten years ago, when we handled this, 1875, or 1876.

Q. What name was commercially applied to that article?

A. It was known as "China starch."

Q. And imported under various names?

A. And imported under various designations.

Q. By Chinese merchants?

A. By Chinese merchants.

Q. Do you recollect whether the white merchants imported that?

A. Very seldom.

Q. Do you remember any name under which any importation by any person other than a Chinaman was made?

A. No, sir; I do not recollect.

108 Cross-examination.

Mr. PAGE:

Q. This substance referred to in the tin cans, which is the substance in controversy here, you remember to have been imported all the time you were connected with the custom-house?

A. Yes, sir.

Q. You said something about knowing the substance in 1875. Do you mean you have known it since 1875? Why did you refer especially to 1875?

A. Because this same question was up at that time for investigation. The question arose whether this was starch or not, and an investigation was made at that time, and apparently these same substances were in question.

Q. And the matter was relegated finally to the Department of the Treasury for decision?

Mr. KNIGHT: I object to the question as calling for the conclusion of the witness, and also as hearsay testimony.

A. Yes, sir.

Mr. PAGE:

Q. At that time it was determined, was it not, that this substance was tapioca flour?

Mr. KNIGHT: Same objection.

A. Determined by whom?

Mr. PAGE:

Q. By the Treasury Department?

A. No, sir.

Q. What was it determined to be?

A. Determined to be starch.

Q. Do you mean the custom-house, or the Treasury of the United States?

A. The decision of the Treasury Department, if I recollect right.

109 Q. Are you not mistaken about that? Was it not determined to be tapioca flour and that tapioca flour came under the schedule headed "tapioca," and that it was therefore free?

A. Not at that time.

Q. Subsequently to that time was not that the fact, that is, it was determined to be tapioca flour, and free?

Mr. KNIGHT: My objection runs to all these questions.

A. I do not distinctly recollect about that.

Mr. KNIGHT: I believe the Treasury Department determined one way, and the courts overruled the Treasury Department.

Mr. PAGE:

Q. It never came into the courts?

A. It did come into court in Portland, Oregon. That was along in the eighties, I think.

Q. You have personally no knowledge of importations, except merely acting as broker?

A. No, sir.

Q. Your knowledge gained in the custom-house with reference to the nomenclature, is based on what is stated in the invoices on the entry of the goods?

A. Yes, sir.

Q. As a matter of fact you know, do you not, that the Chinese population are very erratic in the way in which they enter their goods, calling them one thing one time, and another thing another time?

A. That was the record some time ago, when I had to deal with it.

Q. They are like sheep, following each other, changing about for some particular reason, and then all hands follow, do they not?

A. That was the case with regard to importations of this class of goods at that time, twenty years ago.

Q. During all your experience at the custom-house, has not this article been passed as free under the terms of various tariffs which put tapioca on the free list?

110 Mr. KNIGHT: I object to the question as calling for the conclusion of the witness, and also as being hearsay testimony.

A. No, sir.

Mr. PAGE:

Q. I mean, of course, upon the final decision of the Treasury Department on the subject. I understand that the custom-house here has invariably tried to place it on the taxable list, and as invariably been overruled by the department.

Mr. KNIGHT: I object to the question as incompetent, and immaterial, for the purposes of the inquiry what the custom-house has done.

Mr. PAGE:

Q. How long has it been the custom of the Treasury Department to allow this stuff that is in the cans here to come in free as tapioca flour?

Mr. KNIGHT: Same objection.

A. That I do not know.

Mr. PAGE:

Q. About how long? How long during your administration, or in your connection with the custom-house, have you known the article which has been determined to be tapioca flour to come in free?

A. I remember that after the investigation in 1875 or 1876 these

goods paid the duty required by the tariff upon starch for a number of years. Just exactly how long I do not remember now.

Q. After some years the matter was taken up again and the rule was changed, was it not?

A. That is my recollection of it.

Q. Have you known of any change until the present time in that second ruling?

A. I have not paid any attention to it.

Q. That was this same article, was it not, so far as you can tell?

A. Yes, sir.

HENRY GRAY, called for the collector, sworn.

Mr. KNIGHT:

Q. You are with the firm of F. H. Ames and Company?

A. Yes, sir.

111 Q. How long have you been with them?

A. About four years.

Q. What is the business of Ames and Company?

A. We are commission agents and brokers, manufacturers' agents, strictly speaking, I presume.

Q. In what line of goods?

A. Eastern manufactured goods chiefly. Starches. General agents for the National Starch Manufacturing Company of New York.

Q. What kind of starches do you deal in, or are you agent for?

A. We deal in wheat starch and corn starch.

Q. Do you deal at all with the articles in those cans, a sample of which I think was shown you several months ago?

A. No, sir, we never deal in those articles.

Q. Do you deal in the articles in the bottles?

A. No, sir.

Q. Do you deal at all in tapioca—do you know what it is?

A. I am familiar with the article in a superficial degree. I know what flake tapioca is, and pearl tapioca, and also what the granulated tapioca, under the name of sago, is when I see it.

Q. Do you know to what article the term "tapioca" is applied commercially?

Mr. PAGE: I object. The witness is not a merchant, and not an importer, and knows nothing about it, except superficially, he says he knows the difference between pearl and flake tapioca.

Q. I do not know anything about the growth of it, where it is grown, or anything about it.

Mr. KNIGHT:

Q. Then we will let you go if you do not know about the subject in question—tapioca. I will ask you this question: What are the prices of wheat and corn starch here in the market at the present day?

112 A. Wheat starch runs from about 6½c. to 7c. a pound.

Q. And corn starch?

A. It runs all the way from 3½c. to 5c. a pound. I guess;

Q. In that do you include bulk starch?

A. Yes, sir, bulk starch.

Q. Is that a cheaper grade of corn starch?

A. Bulk starch comes in two forms. It comes in the lump starch which is used chiefly for laundry purposes, and the pulverized starch, which is used for eating purposes, chiefly by restaurants and those who use a large quantity of it.

Q. The lump starch is cheaper than the pulverized?

A. Yes, sir.

Q. The lump is about 3½c. a pound cheaper?

A. Yes, sir.

Q. And what is the lowest price of the pulverized corn starch?

A. I guess it goes down to 3½c., too.

Mr. PAGE: No questions.

CHARLES WILLIAMS, called for the collector, sworn.

Mr. KNIGHT:

Q. You are the manager of the Electric Laundry Company?

A. I am the book-keeper.

Q. Do you know whether or not China starch is use in the Electric laundry?

A. It has been used there I think for about four years up until last August.

Q. What was the reason for making the change?

A. Our superintendent, Mr. Doherty, quit at that time, and with him we quit using the starch, because he knew how to use it.

Q. Was it used by itself, or mixed with other starch?

A. It was mixed with other starch.

113 Q. With what other starch was it mixed?

A. With wheat starch, specially.

Q. Was it used in all cases where you use starch, or did you use this mixture for the same kind of goods?

A. It was used specially for collars and cuffs and shirt bosoms—for the polishing part of it.

Q. Did you use the China starch alone?

A. No, sir; it has not been used to my knowledge alone, but mixed with the other starch.

Q. Did you use any other article, the wheat starch alone, or any other starch, except the mixed wheat and China starch?

A. Other starches are used alone, but the China starch was not used alone; but could be used alone.

Q. For what articles would you use the wheat starch alone?

A. For almost any white article, such as shirts, collars, and cuffs.

Q. I understand you used the wheat and China starch for those.

A. We used it together. When we starch with wheat starch alone it makes it rather stiff, and cracks very easily, but the mixture

with the China starch, as I understand it, gives a sort of pliable feeling. It does not break so easily.

Q. You can bend the collar more easily?

A. It gives it the same gloss, but the surface does not break so easily. That is only what it was used for.

Cross-examination.

Mr. PAGE:

Q. It takes some expert knowledge to be able to know how to mix it?

A. It must do so, because the starch for the collars and cuffs
114 sent to us some time during *yast* year for trial was all mixed and fixed by Mr. Doherty, as I mentioned before. He sent them down here, and he can give a full explanation of how it was done.

Q. Why was it given up when Mr. Doherty left? Why did not some one else do it?

A. They can all do it, but each one has peculiarities. Each man has a way to mix starch and applies starch differently to other persons. Consequently, Mr. Doherty had his way of using it like other managers. Since his leaving there I have not paid for any China starch.

Q. Do you know of any objection to using it as a starch alone, without mixing?

A. I don't know any objection.

Q. Does it not stick to the rollers?

A. Really, I don't know. It has not been used since August of last year, when Mr. Doherty left.

PLINY BARTLETT, called for the collector, sworn.

Mr. KNIGHT:

Q. You are the manager of the Contra Costa laundry?

A. Yes, sir.

Q. And have been for a number of years?

A. Yes, sir.

Q. Do you know China starch?

A. I would not say that I did.

Q. Do you use any China starch in your laundry?

A. I did fifteen or twenty years ago.

Q. And have not used it since then?

A. No, sir.

Q. What starch do you use?

A. Wheat starch.

Q. What do you pay for your wheat starch?

A. Six and a half or seven cents. It varies a little according to the market.

Q. It is a more expensive price, as far as the price, than any other starch?

A. Yes, sir.

115 Q. Why do you use the more expensive starch?

A. We think there is economy in it.

Q. You can do quicker work?

A. Yes, sir, and better work. An employee will do a third more work with better starch than he will with indifferent starch.

Q. Do you use any corn starch?

A. No, sir, not in our day.

Q. You did use China starch?

A. Yes, sir.

Q. By itself or mixed with other starch?

A. By itself.

Q. Did you ever use it by mixing China and wheat starch together?

A. No, sir.

Q. You were given a sample of starch to practically test, were you not?

A. Yes, sir.

Q. By the appraiser?

A. Yes, sir.

Q. You used that on some collars, did you not?

A. I did.

Q. And have you the result there of your work?

A. Yes, sir.

Q. How did you find it worked?

A. The collars will tell for themselves about it (producing).

Q. Do all these four tins contain the collars and starch, with the sample?

A. Yes, sir.

(The tins are marked for identification, "F, G, H, I, J, and K.")

Q. I see box "K" is marked, "10 boxes of tapioca flour." That was not written by you?

A. No, sir, I took them from the appraiser's office. He impressed me with the necessity of getting the samples in the same box as is marked with the material with which they were starched.

Q. Did you, yourself, do this?

A. Not personally altogether. I supervised it. I saw
116 the operation. I saw them put into the box where they belonged.

Cross-examination.

Mr. PAGE:

Q. Is this the best work the Contra Costa laundry can do?

A. With China starch. Will you add that to it?

Q. Yes.

A. I guess it is. Although we paid no attention to it, I can do better work with that starch. I took no particular pains or interest in it, only to accommodate the gentleman.

Q. If you had taken your own starch could you have done better than this?

A. I could.

Q. Without any more labor?

A. Without any more labor.

Q. There is a heap of difference between the two starches, so far as practical use is concerned?

A. There is a difference, of course. It does not apply so much to collars as it does to shirts.

Q. There is, really, when you come down to it. You, as a laundryman, consider this kind of starch as unfit for good work, do you not?

A. No, I do not say that. I consider other starch the best and cheapest in the end, because we can accomplish so much more and give better satisfaction.

Q. Have you ever noticed that China starched goods have an odor to them at all?

A. I never did.

Q. Did you ever notice the starch while it was being soaked and fitted for use, whether it had any odor?

A. I never noticed it.

Q. Did you ever notice whether it makes as light a starch as the starch commonly used in the United States?

A. Very little difference. The result there tells the same.

117 Q. There is an actual difference perceptible to your eye between the two starches?

A. There is a difference between a first-class article and a second-class article, always.

Q. Do you know whether a China starch makes as good and soft a gloss as the other starch?

A. It can be made to have a gloss.

Q. What do you do, spend more time on it?

A. Not necessarily. That is a secret of the business. The material is the same.

Q. Take the kind of starch that you ordinarily use for a good piece of work, and taking the same amount of China starch for the same class of goods, I understand you to say that the result is perceptible in the quality. That is to say, that the starch that you use is better than the other starch in result?

A. It is better in working every day, else I should not pay almost double for it. You can do good, fair work with China starch. I take no pains with it. I could do a good deal better work if I was trying.

Q. Do you know whether the China starch, in working in the laundry, sticks to the rollers more than the other starch?

A. No, sir; I don't know that it does. We have a way of avoiding that, if we find the starch sticks.

Redirect examination.

Mr. KNIGHT:

Q. Do you know how China starch compares with corn starch—this bulk starch—in its adaptability for laundry purposes?

A. I am not an authority on that. I have not used corn starch for a great many years, and use so little China starch that my evidence would not be valuable. I have not had the experience.

118 J. A. DOHERTY, called for the collector, sworn.

Mr. KNIGHT:

Q. You are now the manager of the Modern laundry?

A. Yes, sir.

Q. And were, a little while ago, superintendent of the Electric laundry?

A. Yes, sir.

Q. You have been with the Modern laundry since last August?

A. Yes, sir.

Q. State what starches you use in your laundry.

Mr. PAGE:

Q. Which one?

Mr. KNIGHT:

Q. The one you are now connected with, and what starches you used in your former laundry?

A. I use wheat, corn, and China starch mixed.

Q. Will you state whether or not you find starches thus mixed produce better laundry work than either of those starches by itself?

A. According to my judgment they do.

Q. In what respect are the starches thus mixed better than the starches when used by themselves in laundry work?

A. The wheat starch used alone makes very stiff work—rather stiff. If you give a body to it it will crack too easy. I put in corn starch with it to kind of obviate that, and make it more pliable. Then I put in China starch to give a body to it to make a shirt feel more like a piece of leather, and pliable, and stiff, not to blister.

Q. Have you ever used corn starch by itself, or China starch by itself?

A. I have used corn starch by itself, but not China starch. I have seen it used, and turned out good work, in a white laundry.

Q. What laundry is that?

A. It is not in existence now. It was the North Beach. I was down there one day to see a man, and he told me he never used anything else, and he turned out nice work.

119 Q. Have you any samples of work done with the China starch that is under consideration?

A. Yes, sir.

Q. Will you produce those samples?

A. Yes, sir (producing).

Q. The labels on the boxes were not written by you?

A. No, sir, I marked the number on the collars the same as the box I took it from.

Q. Did you find any difficulty in using that starch in laundrying those collars?

A. No, sir, only of course in using such a small amount of starch it is hard to do good work. When we do starch it we have a lot. Whereas, in this we only had a small sample. We had to leave part of it to show it is the same stuff.

Q. Whatever difficulty you experienced was due to the quantity of starch, and not to its nature?

A. That is so.

Q. Do you know whether or not that starch is used in any other white laundries than in your laundry—than in the laundry that you speak of which was in existence before?

A. The Electric always used the same as I do.

Q. That was a mixture?

A. Yes, sir.

Mr. PAGE: They said they did not use it at all.

A. Perhaps they do not use it since I left there. I always used it there.

Mr. KNIGHT: That is all.

Cross-examination.

Mr. PAGE:

Q. When you were using this China starch, as you call it, at the Electric laundry, how did the price compare with the good starch—with the American starch?

120 A. I believe it comes in 80-pound boxes.

Q. It was a great deal cheaper than the American starch?

A. I don't think it is much cheaper. I don't think it is any cheaper than American.

Q. Not now, but what was it then?

A. It was some years ago. Some years ago I bought it for four cents a pound.

Q. When you were using it up there, was it not much cheaper?

A. No, sir.

Q. Mr. Bartlett speaks of the difference between the starch he uses at the Contra Costa laundry, as costing double the price of China starch.

A. Perhaps Mr. Bartlett has not priced any lately.

Q. I am speaking of a few years ago.

A. I allow it was cheaper then.

Q. It was very largely cheaper a few years ago?

A. Yes, sir.

Q. Why did you not use it altogether, instead of mixing it?

A. I don't really know why. I did not try it, that is all. At that time I was using the corn starch altogether, and not using any wheat starch.

Q. What proportion do you use now, mixing it with wheat and corn starch?

A. About one-tenth.

Q. And the object of putting that in is simply to give it a little more pliability?

A. More body to the work.

Q. Used alone now, would it be a good starch, in your judgment?

A. I have seen good work turned out with it.

Q. Used alone now, would it be a good starch in your judgment, a starch that you could use in your business?

A. I would not care about using it alone.

Q. What is the objection?

121 A. I never tried it alone. I would not want to take no chances.

Q. As a business man, when a starch is half or a third cheaper, China starch, did it not occur to you to make the experiment, and find out if you could not save that amount of money in your starch?

A. No, sir, I would not care about trying it.

Q. It never occurred to you to save any money in that way?

A. No, sir, not in that way. I never care to.

Redirect examination.

Mr. KNIGHT:

Q. What are you paying now for corn and wheat and China starch?

A. Wheat starch I pay six and a quarter cents a pound for.

Q. Corn starch?

A. Corn starch four and three-quarters cents.

Q. Is that what is known as bulk starch, or pulverized?

A. Lump starch.

Q. What are you paying for China starch?

A. I believe it comes in 80-pound boxes, and they charge \$4.50 a box. They sell it by the box, and not by the pound.

Q. They charge \$4.50?

A. Yes, sir.

Q. How long has China starch been at that figure?

A. It has been at that figure for some time. During the China war I paid as high as \$6 a box.

Q. And you still continue to use it?

A. Yes, sir.

Q. Do you know whether or not that \$4.50 for the 80 pounds that you pay includes the tariff or duty on this starch?

A. I do not know.

Q. How long has starch been at that figure, save during the China war—prior to the China war?

122 A. This was the price prior to the China war.

Q. And that has been the ruling price for some time?

A. Yes, sir.

Q. Where do you get your China starch from, San Francisco or the Eastern States?

A. From some of the Chinese grocery stores.

Q. Do you know whether any of the China starch is brought from eastern points?

A. I have no idea. I never go after the starch. Some of the drivers go after it.

Recross-examination.

Mr. PAGE:

Q. Are you sure you are paying as high as \$4.50?

A. That is my impression. I would not swear to it, but I am pretty sure that is the price.

Q. At retail?

A. That is for a single box.

Q. The other you buy by the pound?

A. Yes, sir.

Q. In small quantities, or large?

A. I buy four or five barrels of wheat starch, and about ten boxes of corn starch. The corn starch averages about 45 lbs. to the box.

Q. Can you get wholesale rates for that?

A. Yes, sir.

Q. So you are making a comparison between the wholesale rates for the eastern starch and retail for the China starch?

A. I buy the China starch by the box, not in broken bulk—full boxes. I don't know what they would charge if I would buy ten boxes. I never asked them.

Q. There is a difference between your price and that of the merchants?

A. In buying corn starch there is a quarter of a cent difference in taking a ten-box lot.

123 Mr. KNIGHT: I offer in evidence all the collars produced by Mr. Doherty and Mr. Bartlett.

An adjournment was here taken until tomorrow, May 20, 1896, at 10 o'clock a. m.

WEDNESDAY, May 20, 1896—10 a. m.

LOUIS SARONI, called for the collector, sworn.

Mr. KNIGHT:

Q. You are engaged in the manufacture of candy and confectionery matter in this city?

A. Yes, sir.

Q. And have been so for how long?

A. Nineteen years.

Q. You have had occasion to use corn starch in your business?

A. Yes, sir.

Q. State at what figure you purchase the corn starch that you use in your business.

A. The last purchase was made in the last thirty days at \$1.87½, f. o. b. Chicago and New York, at my option.

Q. Laid down here for what?

A. \$2.87½, if shipped by rail.

Q. How much if shipped by sea?

A. The shipment by sea would be on the basis of \$1.87½ in the east, and forty cents for freight. \$2.87½ is a trifle less than its actual cost on the basis of \$1.87½, but that is what they agreed to deliver it for.

Q. Do you know what is called a "molding starch"?

A. Yes, sir.

Q. What is it?

A. That is a ground starch.

Q. From what material?

A. It can be of either material. God knows what we do get.

Q. You do not know what that moulding starch is made from?

124 A. My opinion is it is made of refuse. That is to say, in the manufacture of glucose; glucose and starch are made at the same time, and they make it of certain remnants of that, for the reason that I can buy the powdered starch at 25 cents a hundred less than I can the lump starch.

Q. You refer, by the powdered starch, to the molding starch?

A. Yes, sir. That is against all reason, for the reason that it costs about one-eighth of a cent for the process of pulverizing, bolting and so on. Yet I can buy pulverized, ground, or molding starch at about 25 cents per hundred pounds less today than the lump starch.

Q. You infer from that that it must be made from an inferior material, or refuse?

A. I can give you further information. The Chicago Sugar Refining Company have no lump starch fit for use, but they do have a powdered starch, and they make it from some—I won't call it refuse exactly—some substance which they have left over in the manufacture of glucose.

Q. You would say, then, that that was about 25 cents less per hundred pounds than your better eating starch?

A. Today, yes.

Q. Has there been any material difference in the figures of starch, in the price, for which you have bought starch in the past several years?

A. Four years ago it was just the reverse. Four years ago the double-bolted, or molded, or powdered starch would cost about one-eighth of a cent, or three-sixteenths more than the lump starch. At that time starch was up and down, according to corn. If you give me any particular figure I can hunt up the exact value upon that day. It has been up as high as a cent more than today. Glucose is worth a cent a pound in the east, and I have seen it as high as four cents.

Q. You never have tried using China starch?

A. No, sir.

125 Q. You buy the cheapest starch that you can buy, I suppose?

A. The cheapest that I can use.

Q. And you found that to be the starch that you are now using?

A. Yes, sir.

Mr. PAGE: No questions.

HUGO D. KEIL, called for the collector, sworn.

Mr. KNIGHT:

Q. What business are you engaged in?

A. The grocery business.

Q. You are connected with the house of Goldberg, Bowen and Company?

A. Yes, sir.

Q. You have been connected with that house for how long?

A. Eleven years.

Q. Are you the buyer?

A. Yes, sir.

Q. Will you state whether or not tapioca is a well-known term of commerce?

A. It is.

Q. Do you know from what source you for that house get tapioca?

A. For an article of food.

Q. From what source?

A. From the cassava root. I know it is made out of that.

Q. Do you import it yourselves?

A. No; we get it through the broker.

Q. Do you get the brokers to import for you?

A. No, sir.

Q. Do you import yourselves, or get it from the importers?

A. We buy it from the importers, through a broker.

Q. From white or Chinese importers?

A. From white.

Q. Can you name the importer from whom you purchase?

A. S. L. Jones & Co., and Brandenstein & Co.

Q. Are you acquainted with the use of that term in the importing trade?

126 A. When I was with Haas Brothers we imported tapioca directly, and we only knew it in an importing term as tapioca, sago, and pearl tapioca.

Q. You then imported it directly?

A. We then imported it directly.

Q. About what time was that, do you recollect?

A. From 1881 to 1885.

Q. Do you know whether since then there has been any change in the commercial designation of tapioca?

A. Not to my knowledge.

Q. To what article was the term tapioca applied in commerce, in the importing trade, on or about the 1st day of October, 1890, at the time the McKinley tariff went into effect?

A. On an article of food in the form of a flake.

Q. To any other article. Do you know whether there was any article known as the pearl tapioca?

A. Yes; pearl tapioca.

Q. Was the term "tapioca" applied at that time to any other article than pearl or flake?

A. None.

Q. Look at the samples in these bottles, and testify whether or not at that time the term "tapioca" was applied to the substance contained therein (pointing to "Exhibits A, B, C, and D").

A. Let me call your attention now to this: When any one asks for tapioca, we generally understand by that the "flake." If he wants pearl tapioca, he mentions the word "pearl" in connection with tapioca.

Q. Will you look at the substance in the box marked "F," and testify whether or not that was the pearl tapioca in commerce, as you understood it?

A. It is.

Q. Will you now look at the substance in these two tins which are samples of the article here in controversy and testify if you know what the commercial designation of those articles was
127 upon the 1st day of October, 1890, to the importing trade—
if you know what the designation to that trade was.

A. Chinese starch.

Q. How is that bought and sold in the market here—under what name?

A. As Chinese starch.

Q. On or about the 1st day of October, 1890, was there any such commercial name in the importing trade as tapioca flour, to your knowledge?

A. Not to my knowledge.

Cross-examination.

Mr. PAGE:

Q. Your experience, Mr. Keil, is confined entirely to San Francisco?

A. Not wholly.

Q. Have you ever lived in any other community as a business man?

A. No, sir, only as a visitor.

Q. Your experience in these matters is confined to San Francisco?

A. No, sir, my visits generally have been on business.

Q. Have your visits brought you in contact with the importers of tapiocas?

A. They have.

Q. Have you discussed the matter with them at all?

A. I did a year ago.

Q. Where?

A. In New York city.

Q. Did you become aware, in New York city, that tapioca flour was a well-known article of import there?

A. I asked several importers of business houses, and they did not know it under that name.

Q. For instance, what class of business men were you engaged

with? Were they themselves importers of the different kinds of tapiocas?

A. They were.

Q. Jobbers—grocers?

A. Jobbers—grocers.

128 Q. Are not their importations confined mainly to articles which are used for families in the way of foods and things of that kind?

A. Yes, sir.

Q. They would not be likely to import articles that are simply used by manufacturers, would they?

A. I think they would, too, but not knowing, I could not say, doing only business with them for articles of food such as we use.

Q. Your own firm here in San Francisco is not likely to import an article the sale of which would be for people who made inks or sized clothes?

A. No, sir.

Q. So your conversations with them would not turn on articles in which neither you nor they had any interest whatever?

A. In this case I must differ with you, because I especially asked them about tapioca.

Q. You were dealing with them, so far as tapioca was concerned. Their business only brought them into connection with the importation of tapiocas which do not go into articles of manufacture?

A. As I said before, I could not tell you. They may be importing all kinds of goods.

Q. In your conversation with these people in New York they did not mention the fact that there was any such thing as tapioca flour?

A. They did not know of any such thing as tapioca flour.

Q. Did you especially ask them if there was such a thing as tapioca flour?

A. I did.

Q. Will you look at this report called "Singapore Exchange Market Report"? Preliminarily, I will ask you whether all these tapiocas do not mainly come from Singapore.

A. Yes, sir.

Q. Does not this market report in the usual course, under the generic name of tapioca give the names "pearl, flake, and flour"? (Handing report to the witness.)

129 Mr. KNIGHT: I object to any testimony which goes to show what the name of this article is outside of the United States.

A. So I see in print, but for all that, the New York importers seem to be ignorant of the article, as an article of food, of manufacture in the United States.

Mr. PAGE:

Q. You said you did not ask them with reference to the article of manufacture at all, did you not? You said you simply asked them if they knew about tapioca flour.

A. Tapioca flour.

Q. In answer to my question you said you did not know if it was to be looked at as an article that goes into the arts or manufactures, whether that was something that would be in their knowledge at all.

A. That may be. But had it been used as an article of manufacture and handled, they certainly would have mentioned it to me at the time.

Q. Provided they had known anything about it?

A. Yes, sir; provided they had known anything about it.

Q. Do you know whether the article in controversy here, or under discussion here, and to which we have referred as China starch, is imported at all in New York? Did you find that out?

A. I did not make any inquiries to that effect.

Q. You failed to establish the very first basis of inquiry, when you did not find out if the article was imported at all?

A. All I inquired about was, to find out if there was such a thing in existence as tapioca flour.

Q. At whose request did you do that?

A. Mr. Channing's.

Q. At the request of the special agent of the United States?

A. Not at his request, but as he had asked me the question, and being anxious to post myself on matters of that kind, I told
130 him I was about to go to New York, and would find out for my own satisfaction if such a thing existed. I did so, making a memorandum among my other business memorandums, and visited three different business houses for that purpose.

Q. Did you take the article along with you?

A. No, sir; only the name.

Q. Simply asked them if they ever had heard of tapioca flour?

A. That is it.

Q. And they said they had not?

A. Yes, sir.

Q. If you wanted to inquire, ordinarily, what the name of a thing was, would you not in some way either take a sample, or describe it, or something of that kind—give a man a chance to know what you were talking about?

A. Not anything that sounds as simple as "tapioca flour," I would not.

Q. Did you ask them whether any China starch was imported into New York?

A. I did not.

Q. Did you ever hear this article called anything but China starch?

A. That is all I ever heard it go by.

Q. You never heard it spoken of excepting in San Francisco, did you?

A. That is all my experience.

Q. Did you ever order any of it abroad?

A. No, sir; never.

Q. Have you ever ordered any of it from importers?

A. No, sir.

Q. If tomorrow you were going to order at Singapore a quantity of this article, would you write on and say, "Please send me so many hundred pounds," or "so many boxes of China starch"?

Mr. KNIGHT: The same objection is made to the designation of this article without the United States.

131 A. As far as my knowledge of the article concerned at present is, I certainly should.

Mr. PAGE:

Q. That is to say, you would not know what else to call it?

A. That is it exactly.

Q. Because you do not know what else to call it does not in your judgment deprive it of having a commercial name by which it is named throughout the importing cities of the United States?

Mr. KNIGHT: Objected to as unintelligible, ambiguous, uncertain; as calling for the conclusion of the witness, and as irrelevant, immaterial, and incompetent.

A. That holds with many goods.

Mr. PAGE:

Q. That is to say, there are a great many things of which you only know by local name?

A. That have more than one name.

Q. Are you willing to swear now that the name "China starch" is the commercial name given by importing merchants in the United States to this article?

A. No, sir, I am not willing to swear to that.

Q. You really do not know what is the commercial name given to this article among importing men?

A. No, sir, I do not, not among importing men.

Redirect examination.

Mr. KNIGHT:

Q. Do I understand you do not know how this article is termed among those who are interested in its importation?

A. I did not understand the question at the time as such. My impression of the question was that the importers only know in ordering this article as China starch, and call it such. But in answer to your question now I must say that I am positive that among the importers in San Francisco it is known commercially in the transaction of business between them as China starch.

132 Q. Then I understand you to mean, on your cross-examination, that you are not aware of the term that the importers would apply to the article in Singapore, or in some foreign port?

A. That is it.

Q. Any more than you do not know if he would use Malay, or Chinese, or English to order his goods?

A. Exactly.

Q. Do you recollect whether or not you made any further inquiries in New York with reference to this article, other than to ask different importing houses whether they knew such an article as tapioca flour?

A. That is all.

Q. You did not ascertain from them if they did import the same article under any other name, did you?

A. Yes, sir, I did. I asked them if they knew a tapioca flour under any name. I also asked them if they had a pulverized tapioca, or sago, put up in packages, and gave it the name of tapioca flour. I even could not find that.

Recross-examination.

Mr. PAGE:

Q. Did you ascertain whether they imported the substance themselves?

A. I did not ask them that, but, being importing houses, I supposed that they would.

Q. Why should you suppose they would if they were importing groceries, or something of that kind, when the article is not an article used in the East, perhaps, in the grocery line at all? For instance, if you wished to inquire as to the name of hides you would not go to a grocer to learn from him what the particular designation of a certain class of hides was, unless you first found out he was in the habit of dealing in those things?

A. I was just about to answer that. They were importing houses of grocers' commodities, therefore I went to them.

133 Q. We will assume this is not a grocers' commodity. It is simply an article which goes into the manufacture of cloth and other manufactures of that kind.

Mr. KNIGHT: I object to the question. The assumption is not borne out by the evidence.

A. Then I could not have found it out.

Mr. PAGE:

Q. With whom, among the importers or brokers selling for importers in San Francisco, have you dealt in the purchase or sale of the substance in controversy?

A. Mr. Ireland.

Q. Is he the only one you have dealt with?

A. No, sir.

Q. Who else?

A. At one time Sim Mack. He is now, however, out of business.

Q. What is he?

A. He is a gentleman of Hebrew persuasion.

Q. Is he now in San Francisco?

A. He is now in San Francisco.

Q. Anybody else?

A. No; I think outside of that we did all our business with the importers direct.

Q. Who were the importers with whom you dealt?

A. S. L. Jones & Co., Brandenstein & Co., and A. Schilling & Co.

Q. They imported the substance in controversy?

A. They did.

Further redirect examination.

Mr. KNIGHT:

Q. Mr. Keil, I want to show you the substance contained in a package marked "Instantaneous tapioca." Will you testify whether or not that has been known and is commercially known, as tapioca?

A. Yes, sir. Not exactly as tapioca, but as a tapioca preparation.

P. F. FERGUSON, called for the collector, sworn.

134 Mr. KNIGHT:

Q. You are the manager of the United States laundry?

A. Yes, sir.

Q. State whether or not you were given by Mr. Tucker a sample of China starch to be used in starching clothes.

A. I was given some samples, but did not know at the time—nothing was said about it being China starch.

Q. Did you know what it was?

A. I received some tin boxes with a powdered flour, as it were, in them, and was asked to see whether it could be used in connection with our business as a starch.

(It is admitted that the sample received by Mr. Ferguson is a part of the article in controversy.)

Q. What did you find after using that starch?

A. We took each sample by itself and starched a shirt and some collars after the same mode or method that we pursued in starching with our wheat and corn starch that we use in the laundry, and found that the goods were as serviceable starched with this starch as with the other.

Q. Will you produce the sample?

A. It was some time ago that we starched these, and they have been laying around, and have got somewhat mussed up and soiled (producing some shirts and collars). They were old garments that were picked up about the laundry, uncalled for. As the piece was starched and ironed, the label was taken off of the can and attached to each shirt as it was starched.

Q. How long ago was this done?

A. I guess six months ago. Those collars were starched with that starch, but which two collars were starched with any particular starch, I could not say.

(The shirts were marked "M," and the collars "N.")

Q. You only use wheat and corn starch?

A. That is all.

Q. Did you ever try to use China starch?

135 A. No, sir.

Q. Why do you use wheat and corn starch in preference to any other kind of starch?

A. I don't know why we use it. We have never been called on in our business to try any other. We never deem it expedient to try China starch. We have been suited with wheat and corn and never sought for anything different.

Q. Do you use a mixture?

A. As a rule we use about two-thirds wheat to one-third corn.

Q. The reason why you do not use China starch is because you never tried it?

A. That is so.

Cross-examination.

Mr. PAGE:

Q. Why do you mix the starches?

A. We feel that we get better results in starching with a mixture of wheat and corn than we do of either corn exclusively, or wheat exclusively.

Q. You say you never have tried what you call China starch?

A. No, sir.

Q. Either for mixing, or exclusively?

A. I have never seen it in connection with our business.

Q. Did you ever inquire whether it was a cheaper article or a dearer article than the ordinary wheat starch?

A. No, sir; I know the price that we pay for our wheat and corn, but I could not state—I have not any means of knowing—what the China starch costs.

Q. Are those shirts you produced the best exponent of the laundry work that you finish?

A. No; I do not wish to put them on exhibition as being a specimen of the work that we produce.

Q. Why not?

136 A. Because in making a starch we have to learn the consistency to make it in order to produce a proper grade of stiffness. These would hardly bear inspection as being as stiff as we would like to have them. Nevertheless, we could starch shirts with this starch.

Q. That is, you think you could when you learn how to handle it?

A. Yes, sir.

Q. So as to give it the proper consistency, etc.?

A. Yes, sir.

Q. The use you made of it, so far as your experience upon that occasion goes, does not produce such results as you would want to keep up as a standard of your business?

A. No, sir.

Q. It may be that there are certain defects in the use which you

do not know anything about, and which could not be remedied, and which would still keep you producing a poor article.

A. Yes, I could not say whether if we continued trying it we could not turn out as good work with this starch as with the other.

Q. You could not say one way or the other?

A. No, sir.

Q. As it is, you would not call it a merchantable article for starch purposes with the result that you have?

A. The test we have made is no fair test for any starch. We had a little can like that mixed up roughly in some water, and I would not call it starchy. It was hardly a fair test. It might be a superior starch.

Q. The result of the test, as far as it went, was not to recommend it as fit for starch?

A. I could not even say that.

Q. The trials that you gave it are not evidence to your mind whether it is unfit or fit?

A. I know it is a starch.

Q. Every one admits that.

A. I know it could be made use of in the laundry.

Q. You do not know whether it would produce good work?

137 A. From my knowledge now I could not say.

Q. So far as the work it has produced is concerned, you do not consider that good?

A. Not superior work, no, sir.

Redirect examination.

Mr. KNIGHT:

Q. Is that as good work, considering you have used this starch for the first time, as you could produce ordinarily by the use of either corn or wheat, or a mixture of corn and wheat, for the first time?

A. We have had higher-priced starch that would not turn out as good work as that, and have thrown it out. It takes some time to become accustomed to the starch.

Q. In the consistency, and in the way it would be mixed, before you could settle that your laundry could do the best work with it?

A. Yes, sir.

Q. And before you would want it to be turned out as a specimen of your work?

A. I would not want to produce this as being a specimen of the work that that starch would do, because it did not have a fair test. But we demonstrated as a fact that we could use it as a starch.

Recross-examination.

Mr. PAGE:

Q. If you went to work and took your time about it, could you starch clothes with ordinary flour?

A. I have never tried it.

Q. Flour has plenty of starch in it, has it not?

A. It is supposed to have. We have never tried it.

Q. Have you ever tried potato starch?

A. It has been said that some of the corn starch that we have bought is not corn starch, but potato starch.

Q. This corn starch that you understand is potato starch, is that fit for starching clothes?

A. Yes, sir.

Q. It could be used just as well as wheat starch?

138 A. Yes, sir, there are certain grades of work that we use mostly all corn starch for.

Q. — am talking of that which you know to be potato starch.

A. Yes, sir.

Mr. KNIGHT: I now offer in evidence two price-lists received by me this morning from Mr. William Ireland, which are published by his son, Mr. B. C. Ireland.

Mr. PAGE: No objection.

(The price-lists are marked "Exhibits O and P.")

An adjournment was here taken to a time to be hereafter fixed.

WEDNESDAY, *June 10, 1896.*

H. H. WHITE, called for the collector, sworn.

Mr. KNIGHT:

Q. You are an adjuster of the port?

A. Yes, sir.

Q. And have been for how many years?

A. Since 1888.

Q. And connected with the custom-house for how long?

A. Twenty years.

Q. At this port?

A. Yes, sir.

Q. As adjuster, do you have occasion to pass upon the classification of merchandise which is imported here?

A. Yes, sir.

Q. Are you familiar with the invoice name under which such merchandise is imported?

A. Yes, sir.

Q. Do you know a substance which has been commonly termed "China starch"?

A. Yes, sir.

Q. Under what various names? In the first place, by whom, if any person has this substance been imported into this port?

A. By Chinese.

Q. Exclusively, or not?

A. So nearly so as you might say it is exclusively. If there are any importations by other parties I have no recollection at the present time.

139 Q. For what length of time are you now speaking—during the time you have been adjuster?

A. Longer than that. I have been in the liquidating department something like a dozen years.

Q. Have you examined the invoiced names of this merchandise on these various invoices you have before you, referring to the invoices which are invoices of the merchandise in controversy?

A. Yes, sir.

Q. State whether or not these invoices contain a fair sample of the relative frequency of the names used by the Chinese under which these articles in controversy are brought here?

A. In my judgment they present a fair average.

Q. The English invoices are copies from the Chinese, are they not?

A. Yes, sir.

Q. The Chinese invoices accompanying the English invoices?

A. Yes, sir; attached.

Q. Do you know what the practice of the Chinese is in making their invoices here of this stuff?

Mr. PAGE: Is Mr. White a Chinese scholar?

Mr. KNIGHT: I will get at how the copy is made.

Q. What is the practice here of the Chinese, so far as you know, regarding their invoices? Do they make out the English of their own invoices, or do they have clerks make out the invoices in English for them?

A. I could not answer that positively. To the best of my information and belief the Chinese invoice is copied in China by the clerk of the house. That is your understanding, Mr. Appraiser, is it not (addressing Mr. Tucker)?

Mr. PAGE: I move to strike that out upon the ground that it is hearsay.

Mr. KNIGHT:

Q. State whether or not it is a fact that the various terms
140 "rice flour," "root flour," and so forth, used by the Chinese in the invoices of this merchandise, are recklessly used by them.

A. To the best of my observation that is the case.

Q. Do you run across the term "tapioca flour" as applied to this substance in the invoices which are presented by the Chinese, and if so, how frequently?

A. It is my impression that the term "tapioca" is used comparatively infrequently with that of other descriptive terms. I would not care to positively testify to that. I have handled so many of these invoices that I have paid very little attention to the descriptive terms in the invoices.

Q. Do you pay the same attention to the descriptive terms in Chinese invoices that you do to the terms used by Europeans or Americans?

A. I do not. I do not consider them so reliable.

Q. Do you know what the practice of the custom-house has been in that respect? Are you stating the practice?

A. I am merely stating my own personal practice. I cannot speak of other departments.

Cross-examination.

Mr. PAGE:

Q. Do you mean to be understood as saying in your personal conduct of your duties you pay no particular attention to the terms used by Chinese importers for the goods which they import, but rely solely on what they seem to be, according to your knowledge?

A. And the return of the United States appraiser, which appears on the invoices.

Q. It never is imported under the name of "China starch," according to the invoices, so far as you know?

A. I have no recollection of ever seeing such a term.

Q. You have heard, in your experience as a custom-house adjuster, of the article "tapioca flour"?

141 A. Yes, sir, the term "tapioca," and "cassava," and "sago," and "arrowroot" I have heard mentioned in connection with this article.

Mr. KNIGHT:

Q. In connection with that substance?

A. Yes, sir, with the general term "starch," as we understand it in the custom-house.

Mr. PAGE:

Q. That is to say, the substance in controversy here you have heard termed "tapioca flour," "cassava flour," and "arrowroot flour," and "sago flour"?

A. Sago flour, rice flour, root flour, and various descriptions.

Redirect examination.

Mr. KNIGHT:

Q. By whom?

A. In a casual conversation with various parties connected with the service, and others.

Q. Do you know whether they had in mind the invoice terms for the stuff or not?

A. I think not.

Q. It has been loosely called almost anything?

A. That is the idea, yes.

W. FRESE, called for the collector, sworn.

Mr. KNIGHT:

Q. What business are you engaged in?

A. Mercantile business, importer and exporter.

Q. What lines of goods?

A. All lines of goods coming to this port from China, India, Calcutta, Rangoon, and so on.

Q. Including starches?

A. I have occasionally imported sago, tapioca, and similar goods, but no starch.

Q. Do you know to what kind of merchandise the term "tapioca flour" is applied?

142 A. Yes, I know, but I never have seen it here. I have seen it at Singapore.

Q. You have never seen any tapioca flour in this port?

A. Not in San Francisco.

Q. Are you in a position to know whether or not in the past several years any tapioca flour has been imported into this port?

A. I don't remember having seen any invoices.

Q. Do you recollect seeing the invoice of any tapioca flour that has been imported into eastern ports, such as New York?

A. I do not recollect. I know tapioca flour is imported into New York from manifestoes seen in Singapore.

Q. For what purpose?

A. It is principally used for textiles in substitution for starch.

Q. That is, for sizing goods?

A. For sizing goods.

Q. Do I understand that is the principal use of the tapioca flour in the East?

A. I don't know of any other use.

Q. Will you now look at this substance which I show you and testify if you know what that substance is, and what it has been commercially known as on the 1st of October, 1890; that is, the date of the passage of the McKinley act (showing witness a tin marked "Tapioca flour, from Wm. J. Stipp & Co., 156 Chambers street, New York city"?)

A. This appears to be tapioca flour.

Q. That is the substance that you have known as being imported into the port of New York for use of textiles?

A. That is what I believe has been imported into New York as tapioca flour from Singapore, as it is called there.

143 Q. Do you know whether the term "tapioca flour" is applied to that substance in the eastern part of the United States?

A. I don't know of my own knowledge.

Q. I will now show you the substance embraced in the tins, invoice 6672, ex Coloma, etc., and which is a sample of the substance in controversy, and ask you to state whether or not that is tapioca flour, as the term is known to you, and as applied by you to the other substances.

A. In my opinion this is not. Tapioca flour cannot be ground so fine as this is. If you take the original tapioca flour it is always very grainy, feeling like sand. This is too smooth for tapioca flour.

Q. Is that a starch?

A. It may be a starch. By subjecting tapioca flour to several washings and bleachings you get a similar article like that.

Q. That substance, in your opinion, is the starch which is produced from the tapioca flour by solution?

A. It may be also from sago flour. Sago flour, if bleached and washed several times, will look similar to this.

Q. That, then, is not tapioca flour?

A. I do not consider it is. I consider it rather a product of tapioca flour.

Q. Do you know what the prices of the substance you have designated as tapioca flour are in New York?

A. I have no idea at present.

Q. Do you know how the price of that tapioca flour corresponds with the price of the starch that has just been shown you?

A. I do not.

Q. You do not know what the relative prices or values of those two are?

A. No, sir, the variations have been very large. I have
144 purchased tapioca and similar goods, sago, at \$11 a pickle, which is 133½ pounds, and bought it at \$2.50 a pickle.

Q. How many years have you been engaged in the importing business?

A. For my own account for six years. And formerly I acted as importer for Siegfried & Brandenstein for eight years.

Q. Of this line of goods?

A. Of this line of goods.

Cross examination.

MR. PAGE:

Q. Have you ever dealt in this form of tapioca that has been presented to you?

A. Yes, sir, but not tapioca flour.

Q. Have you ever dealt in either form of the flours that have been presented to you?

A. Never.

Q. You therefore never purchased them and never sold them?

A. I never purchased them and never sold them.

Q. Never had anything to do with them, excepting you say you have seen one of them in Singapore?

A. Exactly.

Q. How often have you seen it so as to examine it?

A. Very often.

Q. Is there any difference whatever between the two flours excepting that one is powdered to a greater extent than the other?

A. Not in appearance.

Q. Is there any difference except that difference which you detect in it by the feeling where one seems to be a little coarser than the other?

A. None, apparently.

Q. So far as you know, is there any difference in the adaptability of either of those flours to the same use?

A. Not that I know of.

Q. Do you know by what name the substance is called and
145 known in Singapore, which is the substance in controversy
here which you have said is a starch. By what name is that
known in Singapore?

Mr. KNIGHT: I object to the question on the ground that the
domestic and not the foreign designation controls here.

A. It is known as tapioca flour.

Mr. PAGE:

Q. It is known as tapioca flour all over the world?

A. Yes, sir.

Q. The only technical knowledge which you have of either or
both of these substances is what you get in Singapore?

A. Yes, sir.

Q. You have no knowledge of either of them so far as the im-
portations to this country are concerned?

A. No, sir, I never have seen it here.

Redirect examination.

Mr. KNIGHT:

Q. Do I understand you to say, Mr. Frese, on your cross-ex-
amination, that the starch which has been shown you in these tins
has been known as tapioca flour, as well as the substance in the
box?

A. To all appearances. The appearance of the one which you
call starch and the one which you call tapioca flour is exactly the
same, only the difference is in touch, by which I believe that one
is to my best knowledge a product of the other, having been ob-
tained by a process of washing and drying.

Q. Do I understand you to say that the term "tapioca flour" is
equally applicable to both of these two?

A. As far as I can see, yes.

Q. Then I understand you to designate that as a starch, and this
as a flour?

A. That is what I say.

Q. Do I understand you to testify on your cross-examination,
that you would call this starch a tapioca flour?

A. In Singapore, yes.

Q. It is not the same thing, though?

A. No, sir, in the same way as you have other tapiocas;
146 they make a descriptive variation of it. One is large flakes,
the other small; some is pearl flake, large pearl flake, and
small pearl flake tapioca.

Q. Look at the samples in the bottles marked "A," "B," "C"
and "D." What would you call those?

A. "Exhibit A" is a large flake tapioca; "Exhibit C" is a large
flake tapioca; "Exhibit B" is a small flake tapioca. "Exhibit D"
is small flake tapioca, too.

Q. Do you recognize in the trade a difference between a starch and a flour in their commercial terms?

A. This description has not come under my knowledge. I know only tapioca flour.

Q. Do you call everything from the tapioca, tapioca flour?

A. That is powdered, yes.

Q. Everything that is powdered?

A. Everything that is powdered.

Q. Despite the fact of whether it is a starch, or whether it is a flour or meal?

A. Yes, sir, exactly.

Q. Do you know to what article the American trade puts the name "tapioca flour"?

A. I don't remember. I never have seen tapioca flour here; never have seen it imported. This is the first time that it has come to my knowledge.

Q. You have seen the stuff in the tins here before, have you not?

A. Yes, sir.

Q. You have seen that stuff?

A. Yes, sir.

Q. This is the first time you have seen this material in the box?

A. I have seen this material in the box which is marked tapioca flour also.

Q. Have you ever seen the stuff that I call China starch imported?

A. No, sir.

FRANK H. AMES, called for the collector, sworn.

Mr. KNIGHT:

Q. What business are you engaged in?

147 A. I am in the commission and starch business.

Q. Here in this city?

A. Yes, sir.

Q. And have been in that business for how long?

A. Six years. I have been in the starch business for fifteen years.

Q. Do you know a substance here which I refer to as China starch, and which is contained in the can which was shown the previous witness, marked "6672, ex Coloma"?

A. Yes, sir.

Q. What is that, and how was that known on the 1st of October, 1890, as far as you know?

Mr. PAGE: I object to the question on the ground that the witness is not shown to be an importer, or knows anything about the designation by foreign importers as yet. He may know, but he has not been shown to know.

Mr. KNIGHT :

Q. What is your answer?

A. It is China starch.

Q. Where do you get your starch from?

A. From New York, Buffalo, Indianapolis, Des Moines, Cincinnati.

Q. What kind of starches? Are they corn and wheat starches?

A. Yes, sir.

Q. Do you have occasion to deal at all with this China starch in connection with your business?

A. No, sir. We have an opportunity to observe it as it comes in competition with our starch.

Q. Therefore you know what it is?

A. Yes, sir, I see it very frequently.

Q. Have you ever heard of the term "tapioca flour" being applied to any substance?

A. Not in the United States.

Q. Where?

A. I have understood that in Singapore there is a substance of that name.

148 Q. You have never heard the term "tapioca flour" applied to an article in the United States?

A. No, sir.

Q. Do you know what the article which is shown you would be known as in the United States (handing the witness tin can marked "Tapioca flour from William J. Stipp & Co., 156 Chamber street, New York city")?

A. Tapioca flour.

Q. Is that a flour?

A. Yes, sir.

Q. Does it differ in any respect from the starch that has been shown you?

A. Yes, sir.

Q. In what respect does it differ?

A. It differs chemically from the fact that it is the whole flour, and the other is the starch made from the flour.

Q. This containing the properties of gluten and ash and other ingredients which other flours contain?

A. Yes, sir.

Q. Do you know to what the term "tapioca" is applied in this market?

A. Yes, sir.

Q. To what line of goods?

A. To these. (Pointing to "A, B, C, and D.")

Q. Do you of a pearl that that is applied to?

A. This is a pearl tapioca (pointing).

Q. Do you know whether the term "tapioca" is applied to any other article in commerce than pearl and flake?

A. Nothing but that.

Cross-examination.

Mr. PAGE:

Q. Are you referring to your personal experience as a local starch dealer? You are not an importer from foreign countries?

A. No, sir, but I have been in a grocery house; that was a number of years.

Q. What house was that?

A. Mau, Sadler & Company.

149 Q. Did they import all of these articles, or simply the flake and pearl tapiocas?

A. The pearl and flake.

Q. So that your knowledge of tapioca flour is not based upon any knowledge as an importer?

A. Locally acquired.

Q. Not based on any knowledge as an importer?

A. I say when I was with Mau, Sadler & Co. we imported for a number of years.

Q. Did you import what you call "tapioca flour"?

A. No, sir.

Q. You have no knowledge of any importations in any other port in the United States?

A. Not a practical knowledge, except by hearsay.

Q. This stuff that you call China starch, do you know by what name it is known in other portions of the United States as imported?

A. I believe it is known as starch by those who consume it and use it.

Q. I ask you by the importer. Do you know by what name it is imported usually in the various ports of the United States, Boston and New York?

A. It is known as starch by them.

Q. How do you know that fact?

A. I have been investigating this matter for some time.

Q. Have you a personal interest in excluding the use of what you call China starch?

A. I presume so.

Q. That has been the object of your explorations in the matter?

A. No, sir; I have been solicited by Mr. Channing to do so. He brought the matter to my attention first of all.

Q. That is the special agent for the United States?

A. Yes, sir.

Q. You have never been in business in New York?

150 A. No, sir.

Q. Never been in business in Boston?

A. No, sir.

Q. Have you had any correspondence with New York importers upon this subject?

A. No, sir.

Q. Have you had any correspondence with Boston importers?

A. No, sir.

Q. Have you had any correspondence with any person whatever who is an importer of this article in controversy?

A. I have here in this city.

Q. Have you in any other port of the United States except San Francisco?

A. No, sir, no importers.

Q. With what importer of this article have you had any correspondence in San Francisco, California?

A. I have had communication with S. L. Jones & Co.

Q. Do not S. L. Jones & Co. inform you this is known as tapioca flour, as an article of commerce in this country?

A. No, sir.

Q. Have they advised you it is not known as tapioca flour?

A. My understanding was it is known as starch, used for that purpose.

Q. What person of the firm of S. L. Jones & Co. have you had any communication?

A. Mr. Tappenbeck.

Q. My conversation with Mr. Tappenbeck leads me to a very different conclusion. Are you sure Mr. Tappenbeck told you this article was imported under the commercial designation of starch in this country?

A. I did not say that, but it is known by him as starch here, commercially.

Q. That is in San Francisco?

A. Yes, sir.

Q. In San Francisco the article is called starch by people who use it?

A. Yes. I do not know what — is called by people at Singapore, but I should imagine starch is starch the world over.

151 Q. Any starch substances would be called starch if used for starch purposes in any place?

A. The term "flour" could be applied to starch erroneously, from the fact that it is powdered.

Q. You do not mean to say that this substance is known as starch in Singapore, do you, from any knowledge?

A. That I do not know.

Q. You heard Mr. Frese testify a minute ago that from his knowledge of Singapore markets this article would be known there as tapioca flour, did you not?

A. Yes, sir, but I do not see how it is possible.

HENRY J. HANKS, called for the collector, sworn.

Mr. KNIGHT:

Q. What business are you engaged in?

A. I am a chemist and assayer.

Q. And have been so for thirty years last past?

A. Yes, sir.

Q. At the request of either Mr. Channing or myself, you made some little investigation here among grocers as to what tapioca is?

A. Yes, sir.

Q. And acquired samples?

A. Yes, sir.

Q. From whom did you get the samples, and for what did you ask?

A. They are marked on these bottles. The stuff that is contained in bottle marked "A" I got from Goldberg, Bowen & Co.

Q. Did you select representative grocers?

A. Yes, sir.

Q. Haphazard?

A. To a certain extent. I went to those whom I knew to be grocers to some extent.

Q. What did you ask for?

A. I asked for tapioca.

Q. What did they reply?

A. They gave me this. I bought a pound or two of it.

152 Q. That is "Exhibit A"?

A. Yes, sir.

Q. Did you ask for any tapioca flour?

A. Yes, sir, I asked for tapioca flour and tapioca starch.

Q. What did they say?

A. They did not know anything about it. I must assist my memory. I have got a memorandum here. "Goldberg, Bowen & Co. In every case"—that applies to all the bottles—"I asked for tapioca. Upon receiving which, I asked, Have you any tapioca flour or starch? and the reply was invariably, No!" These are samples of tapioca as understood by the grocers of San Francisco.

Q. Then the stuff in bottle "B" you got from Stolz Brothers, 5 Montgomery avenue?

A. Yes, sir.

Q. The stuff in the other bottles you got from the persons whose names are marked thereon at the various times designated on the bottles?

A. Yes, sir.

Q. You have been shown, I believe, this starch or a sample of this starch which is the subject in controversy, the particular lot I now show you is in the can marked "6672, ex Coloma," etc., from the same can shown the previous witnesses this afternoon. You had occasion to examine that?

A. Yes, sir; I think that is the same.

Q. The same that you have made an analysis of?

A. Yes, sir.

Q. State whether or not you can reduce tapioca in any of those four bottles, A, B, C, and D, to the same degree of fineness that the stuff in this can is; and if you had so reduced that tapioca would you get the same substance chemically or in any other respect, that you have in the can.

A. The samples could be reduced to as finely divided powder, but they would be different.

Q. In what respect would they differ?

153 A. The condition of this powder is in starch granules almost entirely free from any other substance. In the bottles it is starch granules which have been changed by heat and become agglomerated, and instead of being individual granules, as in this sample, they are now broken, and a portion of the starch from the interior portion of the granules has combined with themselves and made this peculiar substance, these lumps, which are an agglomeration of the broken starch granules, broken by the action of heat.

Q. Is there any dextrine in the tapioca?

A. I don't know, there may be.

Q. There is a gummy substance, is there not, which has been formed with the heating process?

A. Yes, sir.

Q. And a liberating of the starch in the granule?

A. Yes, sir.

Q. You do not find that same substance in the powdered starch?

A. No, sir. What you call powdered starch is absolutely insoluble in cold water, because the starch is protected by the shell of the granule; whereas, in this case the granules were broken and the starch overflowed. Then it becomes insoluble in water and gives the reaction of starch, showing that a portion of it has been dissolved in the water. Some portion of it may have changed to dextrine, because dextrine is produced from starch by heating, and if this has been heated to 400° Fahrenheit, and that heat maintained for an hour or two, it would contain some dextrine.

Q. What degree of heat is necessary to which to subject that starch in order to produce the flake tapioca?

A. That I do not know. I do not know I ever learned what the degree of heat is. I know the process very well.

154 Cross-examination.

MR. PAGE:

Q. Solubility of starch is considered one of the essential elements?

A. No, sir, not in cold water. In hot water it becomes soluble.

Q. Take the highest class of starch. Is it not more easily soluble in cold water than this particular starch?

A. I do not think so.

Q. Have you ever tried it?

A. No, sir, I have not.

Q. Take the highest class of starches. Are the granules as perfectly covered as this particular article?

A. I think so and all the text books say all starch is insoluble in water. I know this is, because I made the experiment. I know that is insoluble in cold water, because I made the experiment. I also made the experiment with the flake and pearl tapioca, and found that that was soluble in water, showing that the starch was in a soluble condition.

Q. The only difference, then, between the two is that the article

which you call flake tapioca has been submitted to a further degree of heat than the powdered stuff?

A. I do not think the powdered stuff has ever been subjected to heat at all.

Q. It has only been dried?

A. Simply dried.

Q. It is practically a separation of the starch granules from the fiber of the plant?

A. Yes, sir.

Q. Which has been washed?

A. Yes, sir.

Q. To remove impurities as far as possible?

A. Yes, sir.

Q. So that in reality it is tapioca pure and simple?

155 Mr. KNIGHT: I object to the question upon the ground that it imputes a knowledge upon the part of the witness as to what tapioca is which he has not been shown to possess.

A. Yes, sir; pure granules of starch.

Mr. PAGE:

Q. It is a fact, is it not, that that stuff that we are calling a pound of tapioca, or which Mr. Knight calls the China starch, is the first fruits, so to speak, of the manioc plant?

A. I think so.

Q. Without any process other than mere washing and drying?

A. That is my belief.

Q. You did not make any application to any importers to find out whether they had any tapioca flour on hand?

A. No, sir.

Q. You simply went to local grocers and retailers?

A. Yes, sir. I might have continued but I thought that four was enough.

Redirect examination.

Mr. KNIGHT:

Q. Were these wholesale grocers as well as retailers?

A. Some of them were wholesale to a certain extent. Goldberg, Bowen & Co. consider themselves wholesalers.

Q. You did not select them because of their retailing qualities, but because of their representative qualities?

A. Because I supposed they would understand the subject, and I would get an intelligent answer, which I would not if I had gone to a corner grocery.

H. A. KURLFINKE, called for the collector, sworn.

Mr. KNIGHT:

Q. What business are you engaged in?

A. A salesman at present.

Q. With whom?

A. John Horstman.

Q. What business is he engaged in?

A. Manufacturer of soda.

Q. What business were you in before that?

A. I was with John Everding & Co.

Q. Were you their chemist?

156 A. Not exactly.

Q. What was your situation with them?

A. I attended to the starch department, and to the soaperine department.

Q. What business are Everding & Co engaged in?

A. Manufacturers of starch.

Q. How long have they been in that business?

A. In this town since 1854—in West Berkeley. Their office is in this town.

Q. For how many years were you with them?

A. Two years.

Q. Were you in that business before that time?

A. Not in manufacturing, but I handled starch in 1866.

Q. By reason of your connection with the starch business, have you become acquainted with the various kinds of starch?

A. Yes, sir; to a certain extent.

Q. Do you know what the stuff is that is contained in that can; how it would be termed here?

Mr. PAGE: I object to the question upon the ground that the witness has not been shown to have any knowledge of the article of importation in this case, gathered from personal experience, or any other kind of experience in importation.

A. I could not answer the question.

Mr. KNIGHT:

Q. Is that a starch or not (handing exhibit marked "6672 ex Coloma" to the witness)?

A. I would call that a starch.

Q. Is it a flour?

Mr. PAGE: I object. The witness has not been proved to be an expert or to have any knowledge of flour.

A. No, sir; I would not call it a flour.

Q. Why is that a starch and not a flour?

A. It will not make bread.

Q. Do you know what the gluten in the flour is?

A. Yes, sir; I know, partly.

157 Q. What is gluten?

A. Gluten is what I may call the sticky stuff in the flour.

Q. Do you find that gluten in the substance that has been shown you?

A. No, sir, there is no gluten there.

Q. Do you know to what, commercially, the term "tapioca" is applied here in San Francisco?

A. Yes, sir.

Q. What have been your means of ascertaining?

A. I have been in the grocery business for about thirty years.

Q. Did you ever do any importing while in the grocery business?

A. No, sir.

Q. Did the house with which you were connected?

A. No, sir.

Q. Where was that business conducted?

A. In St. Louis, Chicago, and San Francisco.

Q. Wholesale or retail?

A. Retail always.

Q. Any wholesale connected with it?

A. No, sir.

Q. Did you deal in tapioca?

A. Yes, sir.

Q. What did you deal in under the name of tapioca?

A. Flake and pearl.

Q. Was anything else known to the trade as tapioca, besides pearl and flake tapioca?

A. Not as I know of.

Q. Were you acquainted with the term "tapioca flour"?

A. No, sir.

Q. What kind of starch did Everding & Co. make?

A. Wheat starch.

Cross-examination.

Mr. PAGE:

Q. If you take wheat flour, would you call that sticky from the touch?

A. Wheat flour?

Q. Yes, ordinary wheat flour.

158 A. Not while it is dry, it is not.

Q. Why do you say that this stuff in controversy is not sticky?

A. From my feeling.

Q. Can you take ordinary flour, and from the feel tell if it is sticky?

A. You can tell if it is flour or starch.

Q. You say the difference between the flour and the starch is that one has gluten in it, and you know the gluten from the stickiness. Could you take ordinary flour and feel it and say, "I know there is gluten in that because it is sticky"?

A. No, sir. I say gluten is sticky.

Q. You take this article that is in the tin can, which is powdered, so far as you can see.

A. Yes, sir.

Q. You feel it in your finger?

A. Yes, sir.

Q. You say it is not sticky?

A. I did not say that.

Q. What difference is there by the feel, and any ordinary flour which is powdered to the extent that that is powdered?

A. I cannot explain. At the same time I can feel the difference.

Q. You think that if your eyes were shut you could put your hand in half a dozen barrels of different material, all powdered to exactly the same condition, and tell which had more starch and which had gluten, apart, just by the feel?

A. I could put my hand in flour, and in starch, even if my eyes were shut, and I would distinguish.

Q. And that distinction would be from the fact that one had gluten and the other had not?

A. No, sir, just by the touch of my finger.

Q. Notwithstanding the fact that they were both exactly alike so far as the powder was concerned, each particle the same in one as in the other, you could tell the difference by taking them in your fingers?

159 A. If they could be powdered the same I could tell the difference.

An adjournment is here taken until Tuesday, June 16, 1896, at 10 o'clock a. m., with the understanding that the respondents shall proceed with their case, and that the collector may have liberty to call any more witnesses he desires in this city, or, if necessary, may take testimony in New York.

TUESDAY, June 16, 1896.

EUGENE J. BATES, being duly sworn, testifies:

By Mr. PAGE:

Q. What is your name, age, residence, and occupation?

A. Eugene James Bates; my business address is 118 and 120 Market street, San Francisco, and my residence is Alameda, Alameda county, California.

Q. What is your age?

A. Thirty-nine years.

Q. And your business?

A. I am in the importing business with M. J. Brandenstein & Company, general importers of Chinese, Japanese, and oriental imports—from China, Java, Siam, Burmah, etc.

Q. How long have you been engaged in business of that class?

A. I think about twelve years.

Q. Does that class of business in which you have been engaged bring you into contact with the substance known generally as tapioca?

A. In its various forms, yes. I think we are the largest importers of tapiocas in this market, and have been for some time passed.

Mr. KNIGHT:

Q. You mean in the San Francisco?

A. Yes, sir, Pacific Coast market—Portland, Seattle, Tacoma, Victoria, and Vancouver.

160 Mr. PAGE:

Q. In the course of your business are you brought into relation to any extent with the markets of the United States in other places?

A. Yes, sir.

Q. To what extent are you called upon to visit other markets and what markets?

A. Well, we have a branch office in St. Paul, and all of the different kinds of merchandise that we import that we find we can operate successfully in other markets we operate on them in St. Paul or we operate a few Chicago or other points and my practice has been to make a trip at least once a year through the centers of trade in the United States, including New York, for the purpose of obtaining such information as would put me on a footing to do business in any of these various lines that I find that I can do it profitably.

Q. How far were you called upon, if at all, to visit any foreign places in the course and execution of your business duties?

A. Well, I am about to take the next steamer for Japan and China. I have been in Singapore on this business. This is the largest port of export for these tapiocas.

Q. You have only been in Singapore on one occasion?

A. Only on one occasion. I was then returning from Burmah and that section of the country, and stopped off there probably for a period of six weeks. But I went out to Singapore to investigate the different articles that we do business in.

Q. From your experience in connection with the importing business in California and in connection with your habitual visits to other portions of the country, both of the United States and foreign countries, have you acquired a general knowledge of what is generically known as tapioca—of its commercial character?

A. I think I have.

161 Q. From what place does tapioca come to the United States as a rule?

A. Principally from Singapore, and takes in the entire west coast here, although of course it comes by way of Hong Kong, transported generally by steamer from Singapore to Hong Kong, and then from Hong Kong it comes here by steamer or by sailing vessel, but principally by sailing vessel, because it is a very cheap article and the steamer freight is so high that it hardly pays to carry it that way, because it is sold on the market at a very close figure. On the Atlantic ports it is brought by sailing vessel altogether almost, but some little by steamer.

Q. From your knowledge of the tapioca trade can you tell by what names the various kinds of tapioca, if there are various kinds, are commercially?

A. All tapioca, as we understand it, and it is also so called in foreign prices current, notably those of Singapore, is divided into three classifications.

Mr. KNIGHT: Well, I would object to any testimony tending to

show what the foreign classification is for the purpose of reaching a conclusion as to what the designation here in our tariff was. I would like to have that entered as an objection, that we object to the introduction of any testimony tending to show what the foreign classification of this subject in controversy is.

Mr. PAGE :

Q. What are the classifications of which you have spoken ?

A. Flake, pearl, and flour.

Q. From your knowledge of the tapioca trade, is there any difference in the commercial designation in the division of the article into different kinds between the United States as a country and the general world ?

A. None.

Q. It is known all over the world by the designations you have given ?

162 A. Yes, sir, as I understand it, described on their prices current. If they should quote tapioca, they would go on and quote flake tapioca large size, small size, medium size; pearl likewise, large pearl, medium pearl, small pearl, and then generally at the bottom flour, in place of saying tapioca flour, simply say flour. I have a prices current here.

Q. Well, never mind it; a statement of the fact is enough, unless Mr. Knight wants it.

Mr. KNIGHT : I would like to look at it.

WITNESS : Yes, sir ; it is an ordinary prices current. (Mr. Knight examines it.)

Mr. PAGE :

Q. You have spoken of information gathered from foreign trade circulars referring to the prices current of articles such as tapioca and of tapioca in particular. In your experience are the trade circulars of which you have spoken those which are in use among merchants in the United States ?

A. Yes, sir.

Q. From your knowledge of the various kinds of pearl, flake, and flour tapioca, will you state what the uses are if you know of the flour—what you would term “tapioca flour” ?

A. Well, from my investigation it is used—the largest proportion of flour that is imported into the United States comes through the eastern ports, like Boston and New York—and it is used in adulterating colors that are used by the print manufacturers.

Q. That is for thickening purposes ?

A. For thickening purposes—a sort of sizing, sort of a filling. Of course, the reason as to why they so use it I cannot give. The bulk of it is used for that purpose, but it is sometimes used as a food adulterant in thickening soups; a small proportion of it is used for that purpose, and that is about all the general uses that I know it is put to.

Q. In the Eastern States ?

163 A. In the Eastern States. I once asked the question as to whether it was used as a filling in cotton goods, linen goods. I could not find particularly that it was, because at the time that I made the inquiry this flour tapioca was selling in the market at from $2\frac{3}{4}$ to $2\frac{1}{2}$ cents a pound, when ordinary starch that could be used for the same purpose was selling at about a cent and a half.

Q. So that presumably it was a more expensive article than that class of starch?

A. Yes, sir. I do not speak from actual knowledge of what it is used for in this market, but I understand that the Chinese are the largest importers of it; but ordinarily it is not sold except occasionally when the wholesale grocers may have a call for it.

Q. Now, in the ordinary commercial world in what condition are these various kinds of tapioca put up and sold with reference to their designation—is there any designation by the name “tapioca” alone, or are the designations to suit the three different kinds that you have spoken of—to suit three different kinds, for instance?

A. We would ship our goods under an ordinary mark, such as a double diamond, or a star, and if it was flake tapioca it would be marked “F. T.” I have always known tapioca to be shipped in this manner. You must be positive as to that mark, because we might have a lot coming over, and it would be unloaded on the wharf all together and unless we had some such mark we could not tell whether we had flake or pearl tapioca. Some of it comes marked “sago,” but it is the only place in the United States where what is known as sago is actually shipped under the name of tapioca. The tapioca is produced from the cassava root, which is a bulbous root like a potato, while sago is taken from the tree of the sago palm, from the inside of it after stripping off the bark. The ordinary sago,

164 or what comes in here as sago, is not sago at all, but is a small pearl seed tapioca. The small pearl seed tapioca is a tapioca, but, generally speaking, it is known as sago.

Q. It is a substitute for the real sago?

A. Well, yes—some persons must have started it years and years ago, not knowing the difference, some one probably said “Well, this is sago and this is tapioca,” and so it has remained. But if we were to receive an order, say, for instance, for five bags of tapioca we would not know what he wanted. We would write and ask him, “What do you want? Do you want flake, or large flake or small flake, or do you want large pearl or small pearl, we would like to know.”

Q. And the packages, as I understand you in which pearl and flake tapioca, or any tapioca, comes out here to the importers always designate whether it is pearl or flake or flour?

A. Oh, yes. Our shipments are generally mixed shipments, for we would import flake and import pearl and perhaps, as I say, it would all be landed on the wharf together, and unless there was some designating mark there we could not segregate it.

Q. But the grocery trade, how do they sell their tapioca—do they sell tapioca in packages which are simply designated tapioca, or do they designate the class or quality of what the tapioca is?

A. Well, they designate the class of the tapioca from the package.

Q. I believe you brought some samples from New York of the substance that is imported there, known as tapioca flour?

A. Yes, sir; and last year I collected various samples of tapiocas of the various grades in Singapore, and they were contained in glass bottles of that size (indicating) and among the number I brought out the sample—without any reference to this case, at all—I brought out a sample that is marked with the original mark on it, 165 “tapioca flour.” And I have some samples of pearl tapioca and flake tapioca, sago and sago flour. This is the original bottle. The seal is broken. And there is also a sample here of the article that is sold on the New York market. This little tin can contains tapioca flour obtained by me in New York.

Q. Have you given to any person in San Francisco any portion of the sample of tapioca flour that you brought from the New York market?

A. Yes, sir. Yesterday I gave a sample—I was requested by Mr. Swayne—of a small portion of this tapioca flour to Mr. Falkenau, the chemist, and Mr. Swayne, in making an inquiry, I think in the neighborhood of some seven or eight months ago, of the tapiocas, I gave him a portion of the sample I had obtained from Singapore.

Cross-examination.

By Mr. KNIGHT:

Q. Do I understand, Mr. Bates, that you gave a sample to Mr. Falkenau of the tapioca which you got from New York, a portion of which you got from New York?

A. Yes, sir.

Q. Did you give any other sample to Mr. Falkenau?

A. No, sir.

Q. Just that one?

A. Just that one.

Q. And how long ago did you say that was?

A. Yesterday.

Mr. PAGE:

Q. Do you object to parting with your sample bottle of tapioca flour obtained from Singapore?

A. Yes, I do; for parties might come in and ask us for five hundred pickles of tapioca flour and we would not have a sample to go by.

Mr. KNIGHT:

Q. Mr. Bates, you, I suppose, sell by the wholesale, do you not—you do not retail yourself?

A. No, sir, all wholesale.

166 Q. To whom do you sell mostly—to whom do you dispose of that product?

A. We sell generally to the retailer and to the wholesaler, but we do not sell to the consumer.

Q. That is, you sell to the retailer—that is the retail grocer?

A. Yes, sir.

Q. And do you sell to any other class of trade except the grocery trade?

A. Yes, sir; our other lines of merchandise bring us in contact with the general merchandise trade and the dry-goods trade.

Q. Well, now, with reference to this subject, this tapioca flour as you term it—do you sell that to any other trade than the grocery trade?

A. No, we do not sell tapioca flour.

Q. You do not sell that?

A. No, sir.

Q. What forms of tapioca as you understand the designation do you have for sale?

A. We only sell the two grades, the pearl and the flake.

Q. To whom?

A. To grocers, general merchandise trade.

Q. Do I understand you to say that you have anything to do with the importation of what you call the flour tapioca?

A. We don't import the flour. The quantity of it used—after investigating the subject—the quantity of it used is so small that we would not want to be bothered with it.

Q. Have you ever imported to any extent what you call the tapioca flour?

A. No, sir.

Q. Who are the principal importers, if any, of this city, of tapioca flour?

A. I don't think I can give you the exact name in Boston, but there are several concerns in New York that import it very
167 extensively, but I think the principal importer is the firm of Littlejohn & Parsons, New York.

Q. And it is imported in New York and in Boston for starch purposes, is it not—for the purpose of thickening colors?

A. It is used principally there for the purposes that I have stated, mixing and adulterating colors, a sort of sizing.

Q. A sizing for cloth, isn't it?

A. Yes.

Q. That is stiffening cloth?

A. I believe so. A sort of stiffening. And it is used in soups, I believe.

Q. Are you, Mr. Bates, acquainted with the commercial designation of this article in controversy in the grocery trade, as used by grocers, wholesale and retail?

A. You mean tapioca?

Q. Yes.

A. Yes, sir.

Q. Did I understand you to testify on your direct examination, in substance, that if you went into a grocery establishment and asked for tapioca they would not know just what you wanted?

What would they do—ask you whether you wanted the pearl, flake or the flour?

A. If the man understood his business he would ask me what kind of tapioca I wanted, if he was up in his business he would be in doubt as to whether I wanted flake, or pearl or flour.

Q. Well, now, I am speaking now of the general run of grocery stores. If you went into the average grocery and asked for tapioca would he give you any one article, or would he ask you further as to whether you wanted any of these three varieties?

A. It would be a matter of opinion. I have never done it, but I presume he would ask me what kind of tapioca I wanted.

Mr. PAGE: Do you mean the retail trade, or a wholesale grocer?

Mr. KNIGHT: I will confine it to a retail grocer.

Mr. PAGE: We object to any inquiry with reference to the retail trade, as the wholesale trade alone under the law can designate an article for tariff purposes.

Mr. KNIGHT: All my questions, then, I understand, with reference to the retail trade will go in under that objection?

Mr. PAGE: Yes, sir.

Mr. KNIGHT:

Q. You are a housekeeper, are you not, Mr. Bates?

A. Yes, sir.

Q. And use tapioca for purposes of housekeeping?

A. I presume I do.

Q. Have you ever had occasion, for the purpose of supplying your household, to purchase tapioca?

A. Never, Mr. Knight. I always leave everything of that kind to my wife. I don't think I ever purchased a pound of tapioca in my life. She attends to everything of that kind. If she tells me that she wants soap or sugar or some heavy article like that I would provide it for her, I would go to a wholesaler and order it.

Q. Do you know as a matter of fact whether your wife is obliged, when buying from the retail trade, to designate the pearl, flake, or flour tapioca?

A. I should judge she would ask for a special kind of tapioca.

Q. But you don't know from your own knowledge, whether that is so—you simply judge from your knowledge?

A. This much I do know: I know positively in the wholesale trade that if a man would either send to us or ask us for tapioca that we would ask him, "Well, what kind of tapioca do you want?"

Q. You are referring to the wholesale trade?

A. The wholesale trade, yes, sir.

Q. With whom you as an importer do business?

169 A. Yes, sir. For instance, it would be about the same as if a man would send to us and order five chests of tea. Well, we would have to write back to the man and ask him what kind of tea he wanted. Tapioca would be just about as vague an item as tea. He would have to specify the kind.

Q. Now, let me show you, Mr. Bates, four samples which are marked "A," "B," "C," and "D." (Exhibits the samples.) Will you be kind enough to testify, looking at each one of those bottles, the substance contained in each one of those bottles as to what in commercial terms that article is?

A. (After examining samples.) They are all flake tapioca, as I should judge. There are none of them sagoes, are they?

Mr. KNIGHT: Not so far as I know.

A. Well, I should call them all flake tapiocas, of different degrees of fineness and none of them first-class, or what would be known as number one.

Q. Well, you say that this is not the first-class—do you judge from the color?

A. Only. And it is very difficult to tell because the bottles are green bottles.

Q. That is, the nearer the approach to white the better the grade?

A. Yes, sir.

Q. And the size, too?

A. No, the size don't make any particular difference, because the demand regulates the price of flakes. If the demand is large for small or medium flake the price might be higher than the large flake; or a small demand would make it cheaper—the demand regulates that. One would be high and the other would be low according to the demand. They are known as flake tapiocas.

Q. Mr. Bates, the pearl and flake tapioca is produced, is it not, from what you call tapioca flour?

170 A. I believe they are; yes, sir.

Q. That is the tapioca flour—using now your own commercial designation—is subjected to some additional heat, is it not, which produces, for instance, the flake? As I understand it—let me state what my understanding is, and see if I am correct according to your idea: The flour is subjected to an additional heat which causes the granules to burst, and the starch in the granules being at the same time liberated they are agglutinated together and the result is, the flake tapioca.

A. Well, I would not pretend to testify as an expert as to exactly how this is produced, but the United States Pharmacopœia lays down in the encyclopedia in general terms how the tapiocas are made. The flakes, as I understand it—of course this flour is ground and then it is washed in water, in large troughs, and then in order to give it the flake shape it is passed over machinery and through sieves; but in point of fact as I understand it, commercially they are all the same, the flour, the pearl and the flake, the same substantially.

Q. Well, the flour contains more starch than the flake or pearl, does it not?

A. Well, we only know them all as starch, practically. We believe they are starch; they are all starch.

Q. That is, they are generally classified as starches because they contain a large portion of starch?

A. No, sir, we should think that they are starch—all the tapiocas are starch; they are all the same.

Q. You don't know, then, whether the flake or the pearl contains less starch than the flour?

A. No, I think they would be all about the same.

Q. All contain about the same proportion of starch?

A. All about the same. I do not testify to that as a positive fact because I know nothing at all chemically of what this tapioca is, but simply that we believe it to be pretty much all starch—all of them.

171 Q. Mr. Bates, why, if you know, is sago applied to a pearl tapioca incorrectly, in the markets where you testify the term is occasionally applied?

A. This is the only market in the United States that I know of where small pearl seed tapioca is frequently known as sago.

Q. Well, do you understand that to be from a confusion of the products of the palm and of the root, or is it from any other reason?

A. Well, I could not testify as to the reason. But the terms have become mixed. I might explain that to you in this way, that some years ago I knew of a case where a wholesale merchant in San Francisco—he didn't come to us, he went to another party—but he bought to be imported for him, a quantity of sago, a certain number of bags of sago—

Q. (Interrupting.) Where was this, in Singapore?

A. It was in San Francisco. (Continuing:) And there was a contract made out and signed by both parties, and in the course of eight or ten days afterwards he went in to the party and said to him, "I would like to have a sample of that sago that I bought." The man was up in his business, the importer that sold him the goods, but it was quite a new thing to the buyer, and he gave him a sample of the actual sago. "Well, I didn't buy that, oh, no." "Well, that is what I sold you—I sold you sago." Well, the wholesaler had some controversy with him about it and he told him, "I can compel you to take that, because that is sago which I sold you," and an investigation showed that this was the only place in the world where the term "sago" was used for "pearl seed tapioca."

Q. Are you able to state what in this market is the cost, the retail price, of what you designate as tapioca flour?

A. I could not tell you, sir.

172 Q. Can you state what the retail cost is of the pearl or flake tapioca?

A. No, sir, I could not.

Q. You are only acquainted with the wholesale price?

A. That is all.

Q. Do you know of any houses, other than Chinese houses, importing what you call tapioca flour in this port?

A. Yes, I have heard of tapioca flour being imported in this port by other than Chinese houses.

Q. By whom, can you state?

A. Well I would not like to state. I would not like to state, Mr.

Knight, because among the importers, that way, we are very friendly with the people, and it might not suit them to have me tell it, because he has imported it, you understand, and I might import it, and I know that he would keep pretty quiet if I was to import it: Yes, I know of it being imported, and in quite a quantity.

Q. Under what name?

A. That I couldn't testify to, I don't know.

Q. Do you do business with Chinese people, here, to any extent?

A. We are the agents of a line of sailing vessels that ply between Hongkong and San Francisco, and we carry cargo very largely for these Chinese.

Q. But in the disposition of the merchandise that you import are you brought in contact with these Chinese people, either firms or individuals?

A. No, not particularly, except to sell them tea, or whatever they require in small quantities, or rice.

Q. Not the article here in controversy?

A. No.

Q. Do you know from what other places, if from any the different products of the root—this root that we have been speaking of—come from to this country? That is, do all the shipments
173 into the port of San Francisco, come in directly from Singapore—that is, either directly or indirectly from Singapore?

A. From Singapore and this immense radius of country—

Q. Singapore via Hongkong into San Francisco?

A. I don't know as they come from any other ports than Singapore.

Q. How about the eastern ports—Boston, New York, Philadelphia, or the southern ports. Do you know where they draw their supply from, whether from any other place than Singapore?

A. I think they draw their supply from Singapore or those other places surrounding Singapore, like Penang, or Malacca, but Singapore, I should think would export from seventy-five to eighty per cent. of all the tapiocas.

Q. Does any come from Brazil?

A. Yes, sir, there are I believe so called tapiocas, produced, I believe, from the cassava, produced in Brazil.

Q. How does the Brazilian article compare with this of yours which is imported from Singapore?

A. I do not know. We have never dealt in the Brazilian article, and I am not acquainted with the product, but I have heard of it commercially.

Q. You say you don't carry that tapioca flour in stock, or do not import it in your business?

A. No, sir.

Q. How did you happen to get that sample, as a matter of curiosity?

A. No, sir; as a matter of information. You see, we are interested in a great many items, and it would be customary with me to see if there was any tapioca flour or granulated rice or articles of that kind imported into the country, and if I found anything like

that, right in our line of business, I would look it up. As I say, this sample of flour that I brought from Singapore was selected without any reference to this case whatever.

174 Q. This is of the same character of stuff that was offered to you?

A. Yes, sir.

Mr. KNIGHT: I will say, Mr. Page, that I may want to put in some evidence in the way of a chemical analysis of that tapioca flour, under the reservation which I made when we closed at the last session. I do not know of any other testimony that we will have to take here on behalf of the Government.

Mr. PAGE: Very well.

M. J. BRANDENSTEIN, called for the respondents, sworn.

Mr. PAGE:

Q. Mr. Brandenstein, your residence is San Francisco?

A. It is.

Q. And your business is what?

A. Importer of oriental products.

Q. How long has your firm existed?

A. The original firm was founded in 1881.

Q. And you have yourself been connected with that firm how long?

A. Since that date.

Q. You say that you have during all these years been engaged in the importation of oriental products?

A. Yes, sir.

Q. Products from China and from the Eastern countries generally?

A. Yes, sir, China, Japan and India.

Q. In your business have you become familiar with the various products in which you have dealt as well as all the usual products of export from those countries?

A. Pretty well, yes, sir.

Q. To what extent have you kept a run of products which you perhaps have not imported largely yourself, but which are products of those countries, from market reports and correspondence and matters of that kind? Have you kept yourself in touch with the markets of those countries?

175 A. In casual touch; yes, sir.

Q. Do you know the article that is generally termed "tapioca"?

A. I do.

Q. How long have you known that article?

A. Since I have been engaged in business.

Q. Since the year 1881?

A. Since 1881; yes, sir.

Q. Is tapioca a generic term for an article which assumes different forms, or does it apply to a single form of article?

A. It is a generic name for an article in different forms.

Q. What Eastern countries does tapioca come from to the United States and go to foreign countries?

A. It is usually shipped from Singapore.

Q. What forms has tapioca taken during the time that you have been in the business and engaged in the importation of the products of Eastern countries?

Mr. KNIGHT: I will object to that question upon the ground that the witness has not been proven to be qualified to answer the question, it not having been shown that he deals in or imports the specific article in controversy.

Mr. PAGE: Let me ask you this preliminary question, then:

Q. Have you ever been an importer of tapioca?

A. Yes, sir.

Q. For how many years?

A. Since 1881.

Q. Will you now answer the former question please: What different forms, if there is more than one form, does tapioca take in the commerce of this country with the Eastern countries, and the commerce of the Eastern countries with the world generally?

A. It takes the form of small pearl, medium pearl, large pearl, small flake, medium flake, large flake and tapioca flour.

176 Q. Supposing a person were to go into your establishment and say, "I wish to give an order for tapioca," what would you say to him?

A. I would ask him, "What kind?"

Q. And in asking "What kind," would you mention those forms of which you have already spoken, or would you limit yourself to any one of them?

A. I would mention the several forms such as I have been accustomed to import.

Q. From your general knowledge of the commerce of the United States, as gathered from your experience and your correspondence, and the market reports which are used by all merchants, will you state whether or not the article of which you have spoken as tapioca flour is an article of import into the United States, and whether it has been such since 1891?

Mr. KNIGHT: I object to the question on the ground that it does not appear that the witness has a general knowledge, and it does not appear whether or not his knowledge is confined to this place, or whether it is bounded by Eastern places. It does not appear from the testimony how extensive the witness' acquaintance with the term "tapioca" is.

Mr. PAGE: Will you answer the question, Mr. Brandenstein?

The WITNESS: Please repeat the question, Mr. Reporter.

Q. (Repeated by reporter.) "From your general knowledge of the commerce of the United States, as gathered from your experience and your correspondence, and the market reports which are used by all merchants, will you state whether or not the article of which

you have spoken as tapioca flour is an article of import into the United States, and whether it has been such since 1881?"

177 A. To my knowledge it has been imported into this country for a great many years, but I do not know as to whether it has been imported as far back as 1881. I have not looked into that.

Q. When you say it has been imported for a great many years, do you mean to go further back than 1890?

A. I should say so, yes. Oh, yes, considerably further back than that.

Q. From your knowledge of business, and your personal experience, as well as knowledge you have gathered from your correspondence, and from your knowledge of the market reports of importations from Eastern countries into this country, can you say that there is any such article imported into this country, or any article imported into this country, which is known among importers here or exporters from the foreign country as China starch?

A. I have never handled it or come in contact with it in any way.

Q. Have you ever heard of any such thing as an article of export from a foreign country and of import into this country—an article under that name?

A. No, sir, I cannot say that I have.

Cross-examination.

Mr. KNIGHT:

Q. Mr. Brandenstein, was your house formerly the house of Siegfried & Brandenstein, or is that another house than yours?

A. It is the same house.

Q. Is that the name of the house now?

A. No, sir. It is now the house of M. J. Brandenstein & Co.

Q. Since what time was it the house of Siegfried & Brandenstein?

A. After 1881 it was the house of Siegfried & Brandenstein.

178 Q. Were you the Mr. Brandenstein of Siegfried & Brandenstein?

A. I was.

Q. Who attends to your buying and importing, Mr. Brandenstein—any one special member of your house?

A. I do.

Q. You do yourself?

A. Yes, sir.

Q. Is Mr. Frese connected with your house?

A. Yes, sir.

Q. Was he connected with the house of Siegfried & Brandenstein?

A. Yes, sir.

Q. As its buyer?

A. No, not particularly as its buyer. He had charge of the cabling department. He would get instructions from the heads of

the house to cable for quotations and cable orders, or write for them—if you call that buying, he did the buying. It might possibly be considered that way, indirectly. He did not assume the initiative.

Q. Into what port, Mr. Brandenstein, have you imported what you term tapioca?

A. We have imported it into more than one port. We have imported it into San Francisco, Victoria, B. C., Seattle, and I believe Portland.

Q. Not to any other ports than Pacific Coast ports?

A. I am not positive. It is possible that we imported it into New York for direct shipment.

Q. You do not recollect of any such importation?

A. No, sir; I do not.

Q. Where did you get your tapioca, as you call it?

A. From Singapore.

Q. Entirely?

A. Yes, sir, entirely.

Q. Do you import any, or is any to your knowledge imported, from the port of Hongkong?

A. No, sir, except by way of transshipment there; it is almost all transshipped at Hongkong.

Q. It has been all transshipped from Hongkong to these ports, then?

179 A. Yes, sir. There have been one or two shipments direct from Singapore, direct in sailing vessel, to my knowledge.

Q. But with the exceptions you have just mentioned, it all comes from, or is transshipped from the port of Hongkong?

A. Yes, sir; it is all transshipped there.

Q. Do you know whether or not anything is done to the merchandise in Hongkong? That is, is there anything done to it after it leaves Singapore and before it reaches its port of destination in this country?

A. There is nothing done to the kinds that we import.

Q. Do you know whether or not the form of its covering is changed?

A. No, sir, it is not, not in the kinds we import; I have never heard of anything being done to it.

Q. What do you import it for, or what did you, at the time you were importing it, import it for?

A. For general consumption in the trade.

Q. In what lines of business?

A. For food purposes.

Q. And no other?

A. No, sir, no other.

Q. Do I understand you to say that you have not imported any since 1881?

A. Imported any what?

Q. Imported any of what you call tapioca?

A. We have imported tapiocas ever since 1881.

Q. Are you importing tapioca now?

A. Yes, sir.

Q. To what extent?

A. I think possibly we do more than one-half of the tapioca business that is done here in San Francisco. I believe we do—if I am not mistaken.

Q. Do you know the substance that has been called "China starch," or that is called here China starch?

A. No, sir, I do not.

Q. Will you look at the article contained in that tin can
180 which is marked "6672, ex Coloma," and testify, if you can, whether that is the substance you have been importing?

A. (After examination.) We have never imported tapioca flour. I know it only from—

Q. (Interrupting.) You have never been in that line of business, then, importing the article in that form, have you?

A. No, sir.

Q. You never have?

A. No, sir.

Q. I show you now the substance contained in that blue box, the outside of which is marked as follows: "Tapioca flour from Wm. J. Stitt & Co., 156 Chambers St., New York city. June 19, 1895. S. D. Phelps," and I ask you to testify if that is the substance you have been engaged in importing into this port.

A. As I said, I have never imported it; I only know it from my general knowledge of tapioca.

Q. I understood you to testify on your direct examination that you had imported the substance known as tapioca flour?

A. No, sir, I did not so testify.

Q. You have never imported that article?

A. No, sir.

Q. Have you ever imported tapioca in any form?

A. In all forms except that, that I know of—in all forms I named, except the tapioca flour.

Q. Then you have imported the pearl and the flake tapioca?

A. Yes, sir, we have imported the pearl and the flake and the seed—small pearl, or small seed, as we call it.

Q. So your testimony on this question has not been derived from your being engaged in the importation of any of this article in controversy, which is the article contained in that tin can, which is marked "6672, ex Coloma," and which—

A. (Interrupting.) It is tapioca flour.

Q. (Continuing :) And which you call tapioca flour?

181 A. No, sir.

Q. To what extent, Mr. Brandenstein, are you now importing, and have you been for the last six years importing the tapiocas—that is, pearl and flake, into this port?

A. To what extent?

Q. Yes.

A. I think about a half of all that comes here, if not more.

Q. Do you sell to grocers here?

A. Yes, sir.

Q. Do you import for the grocers?

A. I import to sell.

Q. Do you have orders from the grocers, import upon orders, or on your own account?

A. Occasionally on orders, and generally for sales on our own account—mostly on our own account.

Q. Are you able to determine whether or not the substance in that blue box, marked "Tapioca flour from Wm. J. Stipp & Co.," which has been shown you, is the same as the article in the tin box which has also been shown you?

A. I think so.

Q. You say they are the same?

A. I do. Practically the same. One is a little finer than the other, I should judge.

Q. You have never had any occasion to make any chemical analysis of this material, have you?

A. No, sir, I only look at it superficially, as I look at any other article of merchandise, without going into the chemical properties of it.

Redirect examination.

Mr. PAGE:

Q. Assuming, Mr. Brandenstein, that both the articles which have been shown to you by Mr. Knight are the product of the tapioca plant, or manioc plant, are they what you understand to be merely tapioca flour?

A. They are.

182 J. E. MILES, called for the respondents, sworn.

Mr. PAGE:

Q. Mr. Miles, how many years have you been engaged in business in San Francisco?

A. Since 1874 or 1875.

Q. During the course of that time, what has been the nature of your business?—merchandise brokerage, or importations, or what?

A. Merchandise brokerage and importations.

Q. Have you ever been engaged in dealing in or importing the products of China or the Eastern countries, as they are called?

A. Yes, sir, for about ten years to a greater or less extent.

Q. During the course of your experience as an importer or as a broker in dealing in imported merchandise, to what extent have you familiarized yourself with the products of the Eastern countries, and in what way—besides the personal handling of the articles themselves?

A. I have endeavored to inform myself so that I could handle them intelligently.

Q. By a study of what?

A. By samples, and by correspondence.

Q. Does the study of the market reports of the various countries, as well as of this country, come under your personal notice?

A. Yes, sir.

Q. In your endeavors to familiarize yourself with the articles of export from foreign countries and import into this country from Eastern countries, will you state whether or not you have made a special study of those articles?

A. I have made a study of those that I have handled.

Q. Do you know the article generically known as tapioca?

A. I do, sir.

Q. Have you made any special study in the course of your experience as a business man and broker, of that article as imported from Singapore and China?

183 A. From Singapore I have.

Q. To this country and foreign countries?

A. To the United States and to other parts of the world.

Q. What is the name "tapioca"? Is it a generic name, or is it a name that is applied to an article which is produced in a single form?

Mr. KNIGHT: I object to the question upon the ground that it has not been shown that the witness is engaged in the business of importing the article upon which he is called to testify, nor is it shown that he is acquainted with the importer's term for it.

Mr. PAGE:

Q. Is tapioca one of the articles to which your attention has been called in the course of your business experience, and of which you have made a study?

A. Yes, sir.

Q. Will you now answer the question which I asked you before? In commerce is tapioca a generic name, or is it applied to an article that is produced in a single form?

Mr. KNIGHT: I make the same objection.

A. Can you explain that? I do not exactly understand the question.

Mr. PAGE:

Q. Is tapioca the name of an article which is universally recognized by that name, or are there various forms which that article takes?

Mr. KNIGHT: Same objection.

A. There are various forms which that article takes.

Mr. PAGE:

Q. In the commerce between Singapore, or the place of production of tapioca, and the United States and the world generally, what forms does tapioca take?

A. There is a large flake tapioca, and a medium flake tapioca and a small flake tapioca; then there is a large pearl tapioca, a medium pearl tapioca, and a pearl seed tapioca; and there is flour tapioca.

Q. Flour tapioca or tapioca flour?

A. Flour tapioca or tapioca flour, yes.

Q. From your knowledge of the subject, can you state whether or not tapioca flour is known to the commerce of this country as existing in this country and foreign countries under the name of tapioca flour?

Mr. KNIGHT: I make the objection to this question and to all questions in this line of examination, upon the ground that the witness is not qualified to answer them, he not having been shown to have a knowledge of importer's designation of these articles.

A. It is shipped from Singapore to this and other countries, under the name of tapioca flour.

Mr. KNIGHT: I move to strike out the answer of the witness, upon the ground that the foreign designation of the article does not apply in this case.

Mr. PAGE:

Q. The article which you call tapioca flour, and which is shipped from foreign countries to this country and to other parts of the world under the name of tapioca flour: Has that any designation commercially that you have ever heard of other than tapioca flour either here or abroad? (Witness does not answer immediately.) Is there any other designation of which you have ever heard for that article of which you have spoken as tapioca flour, that is, any other designation besides "tapioca flour"? Do you understand the question, Mr. Miles?

A. I would like to have the question asked again, sir.

Mr. PAGE: Repeat the question, Mr. Reporter.

Q. (Repeated by reporter.) "The article which you call tapioca flour, and which is shipped from foreign countries to this country and to other parts of the world under the name of tapioca flour: Has that any designation commercially that you have ever heard of, other than tapioca flour, either here or abroad? Is there any other designation of which you have ever heard for that article of which you have spoken as tapioca flour, that is, any other designation besides 'tapioca'?"

A. I know of no other designation.

Cross-examination.

Mr. KNIGHT:

Q. Have you ever handled the article which you term "tapioca flour," Mr. Miles?

A. No, sir.

Q. You never have in any form?

A. I have had samples of it designated to me as tapioca flour from Singapore.

Q. You never imported it yourself?

A. No, sir, never.

Q. Have you ever imported it in any form?

A. I have imported the pearl seed tapioca, and the medium pearl tapioca, and the flake tapiocas only.

Q. For culinary purposes?

A. For food purposes, yes, sir.

Q. You have imported the tapiocas into San Francisco, you mean to say?

A. Yes, sir.

Q. Have you imported them into any other port?

A. To no other place, no, sir.

Q. Did you ever hear of an article here called China starch?

A. I think I have heard of such an article, but I don't know anything about it, sir.

Q. You say you do not know anything about it?

A. I never handled it, and I do not know that I ever saw any of it.

Redirect examination.

Mr. PAGE:

Q. Did you ever hear of any article, as an article of import into the United States, under the name of "China starch"?

186 A. I am not conversant with China starch, sir. The only business that I have done has been with Singapore. I have not imported anything from Hongkong in that line.

Q. You never heard of an article being imported into this country under the name of "China starch"—that is, designated as "China starch" in the importation, or in the exportation from a foreign country to this country? (The witness does not answer immediately.) Did you ever hear of or read in the market reports of an article called "China starch"?

A. I have never seen a quotation for China starch. That is the only way I can answer the question.

Q. Either from foreign countries or in this country?

A. No, sir.

Mr. KNIGHT: I object to what the foreign designation of the article in controversy is, as that is not material here, and I move to strike out the answer upon that ground.

LOUIS FALKENAU, called for the respondents, sworn.

Mr. PAGE:

Q. What is your business, Mr. Falkenau?

A. I am a chemist and assayer.

Q. How long have you been engaged in that business?

A. Here in San Francisco, do you mean? Thirty years.

Q. Anywhere?

A. Oh, about thirty-six or seven years.

Q. How long have you been engaged in that business in San Francisco?

A. Thirty years.

Q. Have you held any official positions?

A. Yes, sir, I was State assayer.

Q. Do you hold that place now?

A. No, sir. There is no such office now.

Q. Have you examined the article in controversy in this suit in any way?

A. I have.

187 Q. What is the nature of the examination which you made?

A. Microscopical.

Q. What did you find the article which you examined to be?

A. Tapioca.

Q. What is tapioca?

Mr. KNIGHT: I will object to the question upon the ground that it is not shown that the witness is acquainted with the commercial designation of the term, and it does not appear whether the chemical or commercial designation is called for by the question.

A. Tapioca is the amylaceous constituent of the tapioca root.

Mr. KNIGHT:

Q. What is the meaning of that word "amylaceous"?

A. Starchy.

Mr. PAGE:

Q. You say that it is the product of the tapioca plant or root?

A. Yes, sir.

Q. What other name has the tapioca plant or root?

A. Manioc, and several others.

Q. Is it called cassava?

A. Yes, sir.

Q. And is it called cassady?

A. Yes, sir; there are several designations.

Q. The substance that is in controversy here is obtained in what way?

A. It is obtained by freeing the starch granules from the fibre of the root.

Q. In what way, generally?

A. Generally by crushing the root, or by tearing it up by machinery—or by hand either, for that matter; pulping it, and washing out this fine starch and leaving it to settle. In some places they claim that they use sacks, and press it through them. There may be other ways of producing the result as well.

188 Q. But, generally speaking, it is by some kind of grinding and crushing the roots, and separating the starchy substance from the fibre and other material of the root.

A. Yes, sir, the fibre and soluble substances contained in the root are separated from the starchy substance.

Q. The substance in controversy here bears what relation to the plant, with reference to its being the finished product, or is it the first condition after the removal of the fibrous matter? In other words, has the starch that is freed, as you have said, from the plant, been subjected to any subsequent process of any kind, other than mere drying?

A. Simply drying—and possibly washing, in countries where the operation is carried on in a rather rude or rough style, as in such case there may be some finely divided fibre or other impurities which it is necessary to have taken away from the finished product.

Mr. KNIGHT: There is a stipulation in regard to this question, and I object to any testimony which in any way tends to modify or contradict that stipulation.

Mr. PAGE: It is not in any way contradicted by this testimony.

Q. I understand you to say, Mr. Falkenau, that you have examined microscopically this substance which is before you?

A. Yes, sir.

Q. What is the condition of the substance in controversy with reference to its having undergone any grinding process of any kind? Has it undergone such process?

A. No, sir; at least, there are no traces of it visible.

Q. If it had undergone any such process, would the granules still be in their original condition, or would they be broken?

A. No, sir, they would not be broken. That is, I modify that, in so far that if you were to grind this with sand, or quartz, or
189 any hard substance, you might succeed in breaking the cells or granules; but by itself, you cannot do it.

Q. This substance that is now in controversy here, then, does it, under your microscopical examination, show whether or not the cells or granules have been broken?

A. It does not show any breaking of the cells.

Q. They are still in their original condition as they were thrown out from the fibrous material.

A. Yes, sir.

Q. Then they have not undergone any process of any kind other than drying?

A. No, sir.

Q. For the purposes of eating the starchy substance taken from the manioc plant, what is necessary in regard to the removal of the fibrous material and other impurities?

A. In order to convert it into an eatable commodity—for food?

Q. Yes.

A. It has to be boiled.

Q. I asked you, is it or is it not necessary, in order that the article may be made most useful as an edible material, to remove absolutely all fibrous material and other impurities?

A. Yes, sir. The material of the root, the fibrous material, is of course simply fibre without any nourishing qualities in it. It

might only tend to irritate, while the food properties of the tapioca are especially valuable because they are non-irritant.

Q. So that in order to make the article edible, the object is to wash it as clean as possible of all that kind of material.

A. Yes, sir. And beside that, some of the tapioca plants, or rather some species, contain poisonous substances, which are removed by this washing.

Q. Have you examined under the microscope the article
190 in that blue box, marked "Tapioca flour from Wm. J. Stitt & Co., 156 Chambers St., New York city, June 19, 1895, S. D. Phelps"?

A. Yes, sir, I received a sample supposed to be from that box.

Mr. KNIGHT: That is a sample which you received from me?

Mr. PAGE: Yes, I received it from you.

Mr. KNIGHT: Then it is admitted that the article examined by Mr. Falkenau, of which he is now asked, is the same as that contained in the blue box marked, "Tapioca flour from Wm. J. Stitt & Co., 156 Chambers St., New York city, June 19, 1895. S. D. Phelps."

Mr. PAGE:

Q. In what condition did you find the article, or what difference did you find between the article in the blue box under the microscope, and the article in the tin box which is the article in controversy here?

A. None at all.

Q. Did you notice that there was any slight difference between the two, with reference to the touch?

A. Yes, sir, I noticed that distinctly.

Q. What is that difference?

A. The difference is that the article in the blue box has a more granular feel, but when rubbed in the fingers that granular feel disappears, and the same fine substance results that is contained in the other box. I mention that especially because in the modifications of tapioca in the form flake, and so on, the change is such that it cannot be counteracted by friction between the fingers. Consequently, it has undergone no change of that character.

Q. That is to say, the substance in the tin box has undergone no such change as is apparent in pearl tapioca and flake tapioca?

A. Yes, sir—that is, it has not.

Q. Do you know to what the difference in feeling to
191 which you have referred, between the contents of the blue box and the contents of the tin box may be attributed?

A. Probably to the agglutination from imperfect washing of the starch, or through its having become moistened afterwards. I should say that is it, although there may be various causes for it. Possibly there was a little difference in the treatment. For instance, if the starch, in drying, should be dried without stirring, or without some means to keep it as a powder, it would naturally agglutinate, and would become lumpy, and, if required in the shape of a pow-

der, it would be necessary to put it through a screen—I will not call it a grinding process, because there is no actual grinding; it is simply a separating of particles which it may be have become slightly agglutinated.

Q. You are referring to the material in the blue box?

A. Yes, sir. You may notice that the sample in the tin box has that same feel, only that the lumps are smaller; the identical fine, hard lumps are contained in that also.

Q. Is the sample of the article in controversy marked "Tie Yick 5098 sago flour," which it is agreed is also the product of the tapioca plant, in anywise different from, and if so, you may state wherein you note any difference, the article in the blue box, or the article in the tin box about which you have been testifying here.

A. (After examination.) No, sir; it is virtually the same as that in the other tin box. The granules are there, but they are very fine and small, while these in the blue box are closer. You may occasionally come across a coarse granule in any of the samples.

Q. The only difference between the various articles is, that in some the granules have become agglutinated?

A. Yes, sir.

Q. Is it an uncommon thing for ordinary starchy substances to come in the condition that you find the article in the blue box.

A. No, sir. Our laundry starches come in that condition mostly; they come in lumps, and sometimes squares, and so on.

Q. So that the ordinary starches are more like the article in the blue box, as far as that is concerned, than the article in the tin box marked "Ex Coloma"?

A. Yes, sir.

Q. In your examination of the article in the blue box did you find any elements of any kind which are different from the elements of the article contained in the tin box or *vice versa*?

A. No, sir, I did not.

Q. I believe you have made various examinations of the article in controversy as it was originally produced in this examination, have you not?

A. Yes, sir.

Q. Different examinations?

A. Yes, sir, probably some ten or twelve samples.

Q. Will you state whether or not in those examinations you found the differences that are at present apparent as between the contents of the blue box and the contents of the tin box before you?

A. Yes, sir, to some extent. Some samples were finer than others.

Q. Assuming the use of either of those two articles in the tin box and the blue box for starch purposes, is there any difference whatever between them?

A. No, sir, I did not see any.

Q. One is just as good for starch purposes as the other?

A. Yes, sir, on boiling, those granules will become dissolved as well as the others.

Mr. KNIGHT: I object to this testimony, upon the ground that it has not been shown the witness has used products similar to either of these samples for starch purposes, and therefore he is not
193 able to testify concerning their value for starch purposes. I move to strike out the testimony upon the same ground.

Mr. PAGE:

Q. For edible purposes, is there any difference between the two?

A. No, sir, not that I can see.

Q. They both contain the granules in perfect form?

A. Yes, sir.

Q. Unbroken.

A. Yes, sir, unbroken.

Q. Are both of them soluble or insoluble in cold water?

A. I have not tested them as to that. Most likely they are insoluble. We assume that all starch that is still intact in granules is insoluble in cold water.

Q. Have you ever made any experiments, or caused any experiments to be made under your supervision with the substance in the tin box, for the purpose of determining its use as a starch for laundry purposes?

A. I have.

Q. Did you find any difference between that and the ordinary wheat or corn starches?

A. Yes, sir, I did find some difference.

Q. What differences are there?

A. The differences that I noted were, firstly, that the starch took longer to boil than other starch. I repeated that experiment on a small scale to convince myself of it, in my laboratory, and found that the ordinary laundry starch—corn starch, wheat starch, and so on—would change into the condition that is produced by boiling much quicker than this tapioca starch would. On examination with a microscope, I should say that after a certain time there would be many more unruptured starch cells in this than there would be in the other.

Q. That is to say, there would be many more unruptured cells in the product contained in the tin box.

A. Yes, sir.

194 Q. What was the effect in the use of the stuff contained in the tin box as a starch, in point of color produced by it, as compared with that of wheat or corn starch?

A. The color was not quite as white; there was a little more of a yellowish cast about it.

Q. How was it with reference to the smoothness produced by this article, as compared with the ordinary wheat or corn starch?

A. It did not appear as smooth. There is a trick used for making the starch smooth, which is by adding some stearic acid to it in the shape of candles, and so on. It required more of that in this

starch than it would in the wheat or corn starch, to make a nice, smooth effect.

Q. After the starch had formed, was there anything peculiar in the neighborhood with reference to the odor?

A. Yes, sir, there was a peculiar odor.

Q. Which is not produced by the ordinary starches in use?

A. Not produced by the ordinary starches in use, no sir.

Q. Is the United States Dispensatory a standard authority upon the subjects upon which it treats, among the scientific men of this country?

A. Yes, sir, it is so considered.

Q. Have you examined the article on "tapioca" in the last edition in the dispensatory?

A. I have.

Q. Do you agree with the statements therein made with reference to tapioca, so far as you are able to state?

A. Yes, sir.

Mr. PAGE: I suppose we can agree, Mr. Knight, to use the dispensatory, without taking the whole thing.

Mr. KNIGHT: Do you want to offer that article?

Mr. PAGE: Yes. The respondent offers the article in the 195 United States Dispensatory, last edition, headed "tapioca," and it is agreed that the same may be read by the court.

Mr. KNIGHT: I will agree to that.

Mr. PAGE:

Q. Does tapioca in any of its forms contain gluten?

A. No, sir.

Q. Can this article be considered a flour chemically?

A. Yes, sir. A flour chemically is anything that is finely enough powdered.

Q. With reference to cereals which contain gluten, "flour" involves the grinding of the various particles, does it?

A. Yes, sir.

Q. Do you know of any substance which is ordinarily or chemically called a flour which contains no gluten?

A. Oh, yes. There is potato flour, and flour of sulphur, and flour of emery, etc.

Q. And sago flour?

A. Sago flour.

Q. And arrowroot?

A. Yes, sir.

Q. There are a number of them which contain no gluten whatever which are called flours?

A. Yes, sir.

Q. This article that is before you in the tin can, and which is the subject in controversy here, is that capable of being made use of for food purposes, or not?

A. Yes, sir, it is used for food purposes.

Q. It contains nothing that would be injurious?

A. No, sir.

Q. Does it contain anything that other forms of tapioca do not contain?

A. No, sir.

Q. With reference to form, I will ask you—

A. (Interrupting and continuing.) I will modify that answer to one extent, and that is that flake and seed tapioca, and so on, all contain a little decomposed starch—changed starch.

Q. What is the difference between those and the tapioca starch?

A. Do you mean the granules?

196 Q. Yes, between the flake or pearl tapioca and this article.

A. The flake or pearl form of tapioca has been subjected to a heat sufficient to decompose the starch cells so far as to form a glutinous mass and allow of its being rolled into smaller or larger fragments—globules.

Q. This article in controversy here if heat be applied to it, can be made to serve all the purposes that the other forms of tapioca serve?

A. Yes, sir.

Cross-examination.

Mr. KNIGHT:

Q. You are not a practical laundryman, are you, Mr. Falkenau?

A. No, sir.

Q. Did you ever try this starch in controversy when mixed with other starches, such as corn and wheat starch?

A. No, sir.

Q. You have simply tried it by itself in an experimental way?

A. Yes, sir, in comparison with other starches.

Q. What kind of cloth did you try it on?

A. Cuffs and collars.

Q. Have you ever starched cuffs and collars before you did this?

A. I did not do it myself; it was done under my supervision.

Q. Who did it?

A. My wife.

Q. Does your wife ordinarily starch collars and cuffs?

A. Oh, yes, a great deal.

Q. And she never has used a mixture of this substance with other substances.

A. No, sir.

Q. How many cuffs and collars did she starch?

A. I believe two, or four—two with ordinary starch and two with this.

Q. Did she try any shirts?

A. No, sir.

197 Q. Did she try any other kind of an article of clothing, or article made of cloth, except collars and cuffs?

A. No, sir, just collars and cuffs.

Q. Have you those collars and cuffs that she starched?

A. I do not know whether they are still on hand or not. This

thing has been so protracted, that I could not state; I do not know whether they have been thrown away or not.

Q. What was the difference in the appearance of the cuffs starched by wheat or corn starch—which was it, wheat or corn starch?

A. I don't know; ordinary starch.

Q. Ordinary bulk starch?

A. Ordinary bulk starch.

Q. What was the difference between the appearance of the collars and cuffs as starched with the bulk starch, and as starched with this China starch—that is, substantially this article in controversy?

A. It didn't look quite smooth and it had a tint; it was not as white as that starched with the bulk starch.

Q. How much off a white color was it?

A. You cannot exactly gauge that. It did not appear as nice in color as the other; the color was off.

Q. Did your wife use any acid to take away the roughness of the starch?

A. Yes, sir, we used stearic acid.

Q. The acid to which you have testified upon your direct examination?

A. Yes, sir.

Q. In what quantities did she use it?

A. It was just used the ordinary way it is used in starch.

Q. Experimentally?

A. Yes, sir.

Q. Your wife, if I understand you, was not accustomed to use this starch, and this was the first time that she ever used it—the China starch?

A. She never had used that kind of starch.

198 Q. Do I understand you to say that the product of this cassava root does not contain any gluten?

A. Yes, sir, it does not contain any gluten.

Q. Have you made an analysis of it?

A. I have made what we call a mechanical test for gluten. When a substance contains gluten, if it be mixed with water and kneaded in a very close cloth, the starchy particles will be allowed to pass through, while the gluten will remain behind.

Q. You made such a test in the case of this substance, did you?

A. Yes, sir, and nothing remained.

Q. That was the only test that you made to determine whether this article contained any gluten, except a microscopical examination?

A. No, sir.

Q. You did not make any other examination?

A. No, sir.

Q. You did not subject it to a chemical analysis?

A. No, sir.

Q. You have no prepared statement, have you, as to the ingredients of this substance in controversy?

A. No, sir, not my own. I have one by Dr. Kern.

Q. That is the statement which you got from me?

A. Yes, sir.

Q. Is that correct as far as you know?

A. As far as I know, it is. Of course, I have not verified it; I have not made the analysis.

Q. Is it not a fact, Mr. Falkenau, that the substance in controversy has been produced from the powdered form of the root by submitting that powdered form, among other processes, to aqueous solutions—a solution will cause the starch to be withdrawn from the rest of the fibrous ash and matter that the powdered substance contains before it has been passed through the aqueous solutions?

A. Solutions of what?

Q. Of water, or of any acid which would best draw the starch off?

199 A. Acid would not have any such effect. Water would, but we would not call it a solution.

Q. We will call it "a washing," then.

A. Yes, sir.

Q. This substance in controversy is a result of the washing of the powdered fibrous matter, is it not?

A. Yes, sir.

Q. And there have been repeated washings, as far as you can tell?

A. There may have been. That I do not know, of course. It is most likely that there have been.

Q. And you have finally got the substance down to the pure starch, as near as you can determine from the analysis which you have made of it, have you not?

A. Yes, sir.

Q. What would you call the powdered matter of the root before it was subjected to those washings? Is that not a flour?

A. No, sir.

Q. What is it?

A. Simply a powdered root.

Q. A meal?

A. No, sir, nor a meal, either. I would distinguish there. For instance, if you take wheat with the stalk upon which it grew, or with the hull of the wheat, or say if you take corn, with the stalk upon which it grew, etc., and ground that up, that would be about the condition that this root is in.

Q. Let us take corn or wheat as a substance——

A. (Interrupting.) In making flour of that we remove the hulls.

Q. And then you make a starch from the flour, do you not?

A. Yes, sir, if we make starch, because we have the gluten to remove.

Q. Let us take the substance in controversy. We have obtained a starch from the powdered substance. Do you call that
200 starch chemically, that which has been obtained—that is, a substance that is as near a pure starch as a substance can be—still a flour?

A. Yes, sir.

Q. Then, according to your idea of the definition chemically of

the term "flour," it is any powdered substance, regardless of what is its composition?

A. Yes, sir, except that when you come to grain flours or to flours from leguminous plants, say like peas and beans, the difference comes that in making starch from them we separate the gluten for the very good reason that you do not want the gluten in the starch; it would make it sticky.

Q. Then you say that flours of cereals or leguminous plants are different from flours of a root like this?

A. Yes, sir.

Q. That one would be called a flour and the other one would not?

A. Yes, sir.

Q. That is, because the gluten was present in one, it would be different from the other—you would call the substance obtained from the cereals or from leguminous products which contained gluten, which substance was the resultant of a washing in the proper solution a starch, while in this case you would call the result of the washings a flour?

A. Yes, sir, everything that you could put into flour shape or into fine powder. You could not grind the fibre of a root to make a fine powder like this.

Q. Supposing we take out the fibre?

A. There would be nothing, or hardly anything left, except soluble substances—acids and sugars.

Q. Suppose you grind that before you have reduced it to starch. Would you say that it was a flour?

A. Yes, sir.

Q. It is still a flour right straight through, and does not matter how many washings you have put it through?

A. No, sir.

201 Q. It does not matter how much starch you have extracted, or how much of other matter the substance contains; it is all flour chemically?

A. It is a flour if we have removed only the fibrous part of it, so that we get it into a powdered condition. If that were possible without the use of water, it would be a flour just the same.

Q. But a different rule applies to cereals and leguminous products?

A. Yes, sir, because we remove an insoluble substance in that case.

Q. Is gluten the only ingredient which flour contains that starch does not?

A. There are a few others. It contains sugar to a very slight extent, and coloring matter, and so on.

Q. Are there any albuminoids?

A. Yes, sir.

Q. And ash?

A. Ash.

Q. And oil?

A. Those are not removed by washing. Those are contained in

the starch as well to a certain extent. Anything not soluble in water is also contained in the starch.

Q. Are not these substances which I have just mentioned removed from the substance in controversy?

A. No, sir. The ash is not removed. The ash is there just the same as it was before.

Q. They are still there?

A. Yes, sir; the water does not extract them.

Q. What has been removed except the crude root?

A. If I may refer to the analysis of Mr. Wiley on the subject, that Dr. —ern quotes, I could tell. Possibly there would be some oil, and albuminoids.

Q. The albuminoids, you say?

A. Yes, sir, soluble albuminoids.

Q. How about the ash?

A. The ash would remain there.

202 Q. You would have the oil and the albuminoids out by the washing?

A. Yes, sir. There might be some parts of the ash soluble. According to Mr. Wiley's data here, there seems to be considerable of it that is insoluble, but there are some other points to be considered there; as, for instance, in what condition the root was, and what it contained in the way of ash. Of course, we cannot judge upon such points as that, because we have not the root for examination here. There is another point which you will allow me to call your attention to. Here is cassava root by Wiley quoted as 1.94 per cent. ash, but no water. That is certainly absolutely dry. These starches contain considerable water. They contain from 12 to 18 per cent. generally—12 per cent. is about the minimum. Some of them I see go up as high as 18 per cent. of moisture. Consequently, when figured in the dry, the ash would amount up considerably.

Q. Is any of that ash dissolved when the powdered substance is washed in producing the starch?

A. There might possibly be some ash dissolved; I am not able to tell, because I have not the root, and there are no exhaustive analyses of the roots that I have been able to find.

Q. How about the oil? Oil is quoted there at 1.27?

A. There is oil here quoted at 1.27, yes, sir.

Q. That oil is dissolved, is it not, and does not appear in the starch?

A. It does not appear in the starch—at least, according to these analyses.

Q. You are not prepared to disprove these analyses?

A. I do not know as to that. I have not made any analysis of them.

Q. We will proceed upon the assumption that these analyses are correct, without committing you to testifying that they are

203 correct. Take the albuminoids in the cassava root here. That is quoted at 3.47 per cent. Those disappear in the washings to which the fibre has been submitted in producing the substance in controversy, do they not?

A. I do not know to what extent. These tables do not exactly tell me.

Q. Did you not state, Mr. Falkenau, that the albuminoids did disappear?

A. They may disappear; I don't know whether they are insoluble or not. There are soluble albuminoids and insoluble albuminoids. The soluble ones would disappear, and the insoluble ones would not. He has here, under the same head from .25 per cent. up to .3 per cent. under the head of albuminoids, but he says at the side, "oils, etc." Whether that means albuminoids, oils, etc., or not, I do not know. Here, under the heading of "oils" there is nothing quoted for the starches, but afterwards oils are mentioned, as I see there. Now, which is which?

Q. We are now talking, Mr. Faulkenau, about the analysis as appears there, I think it is the one by Mr. Wiley, for the powdered dry cassava root.

A. Yes, sir.

Q. I understand you to say that perhaps some of the ash is lost, or rather does not appear in the starchy product—the ultimate starchy product?

A. Yes, sir.

Q. And the oil does not appear?

A. The oil does seem to appear here, as I say, afterwards.

Q. In the starchy products?

A. Yes, sir; Dr. Kern specially notices it here. He says, after the figures "0.25," under the heading "albuminoids," are the words, "oils, etc."

Q. It is reduced from 1.27 per cent. to .25 per cent?

A. .25 per cent., yes, sir.

204 Q. Do the resins, alkaloids and organic acids appear in the starch?

A. Not according to that.

Q. Do the anoid sugars and glucosides appear?

A. No, sir. They are of course soluble, and would be washed out.

Q. Nor does the crude fibre appear, of course?

A. No, sir.

Q. How about the albuminoids?

A. I don't know whether this figure here represents the albuminoids alone—

Q. (Interrupting.) Take that notation there with "oils, etc." after it. That represents the oils and albuminoids, I presume—.25?

A. Yes, sir.

Q. According to this analysis, then, a starch product is, chemically speaking, an entirely different substance from the root itself, is it not?

A. Yes, sir.

Q. And that is powdered root dry that is represented in that analysis?

A. Yes, sir.

Q. And yet you apply the term "flour" to that starch product,

which has lost all, or nearly all of its ingredients before it was subjected to the washings?

A. Let me show an analogy there that I think is necessary to explain my standpoint. If you take an analysis of wheat, and take an analysis of wheat flour, you will find quite a difference.

Q. You mean the kernel?

A. Yes, sir. In making the flour we remove a number of substances that are not found afterwards in the wheat flour.

Q. According to the analysis given us here by Dr. Kern in tabular form, taking wheat flour as a sample of flour from cereals, and cassava root dry, exclusive of the part taken from Mr. Wiley's figures, we have in the one—that is, in the wheat flour—starch, 65.70 per cent.; under the cassava root, we have starch 71.85 per cent.

Now let us take this article by article. As we subject the 205 flour to a solution—it is an acid that is used in obtaining the starch from flour, is it not?

A. Not necessarily; just water will do.

Q. Well, we will say an acid or solution. When we subject the flour to this washing or solution, as well as the cassava root dry, we get, naturally, a high percentage of starch, do we not?

A. Yes, sir.

Q. The wheat flour under the table given us contains in gluten, dextrine, and sugar from 12 to 27 per cent. The cassava root in those substances contains 17.93 per cent. As I understand it, you disagree, then, with Mr. Wiley's figures in saying that there is no gluten in cassava root, do you?

A. I do not know positively, because I have never analyzed the cassava root, as I say, but I do not think there is any gluten in it—most likely there is not.

Q. In the manufacture or production of starch from the flower or root, those substances, the gluten, the dextrine, and the sugar disappear, do they not?

A. Yes, sir.

Q. So when we get to starch, they are practically nil, are they not?

A. Yes, sir; but with the difference that in the flour we remove these only, virtually speaking, and in the cassava root we remove a lot of fibre.

Q. You remove the fibre as well as those substances?

A. Yes, sir. The fibre in the wheat is comparatively little.

Q. But you have the fibre as an additional substance to be removed in the starch obtained from the cassava root?

A. Yes, sir. It is already removed in making wheat flour. In the one case you have the secondary operation.

Q. It is the bolting—

A. (Interrupting and continuing.) The husky material, 206 whatever you may call it, that is not used in making the flour.

Q. That fibrous material goes into making the rolled wheat that we use on the table.

A. Yes, sir; partly.

Q. It would be a sort of a rolled wheat that is sometimes used as a mush on the table.

A. Yes, sir.

Q. We next come in the table to the cellulose fibre, which is in the cassava root dry to the extent of 4.03 per cent., and so we may go on through with this table, and we find that in the process of obtaining the starch we eliminate one after the other of these various ingredients of the cassava root dry, until we get down to a substance that is practically pure starch, do we not, Mr. Falkenau?

A. Yes, sir; from which the flake and the other tapiocas are made.

Q. The flake and the other tapiocas are made by a process of roasting, or subjecting to a heating process, I suppose?

A. Yes, sir.

Q. According to your definition of the term "flour" chemically, would you not call the starchy product from the wheat flour a flour?

A. As far as its consistency is concerned, yes.

Q. It is a powdered substance?

A. Yes, sir.

Q. Would you call it a flour, if you had the product of the wheat or maize or rye which contains the gluten, and the fibre, and the ash?

A. No, sir; because there is there a usage that interferes with it. We are accustomed to calling as wheat flour a substance that contains gluten.

Q. You have defined flour to be a substance reduced to a certain consistency.

A. Yes, sir. You could call that a starch flour, if you wanted to.

Q. The term "flour" would be equally applicable to the starch as to any of the substances that we ordinarily term "flour"?

A. Yes, sir, and to potato flour and sulphur flour, too, and they contain no gluten.

Q. You are not acquainted with the commercial designation of the substance in controversy, are you, Mr. Falkenau?

A. No, sir.

Q. You have never had any occasion to know what it is termed in the markets of the country?

A. No, sir.

Q. And your testimony has been derived from a mechanical and microscopical analysis which you have made as you have testified?

A. Yes, sir.

Q. Just what examination have you made of the substance contained in that blue box marked, "Tapioca flour from Wm. J. Stitt & Co."?

A. Only a microscopical examination.

Q. Did that reveal to you whether or not there was any other substance, or any other element than starch there?

A. No, sir, it did not show anything else but starch.

Q. Are you able to testify from your examination whether or not there is any dextrine in that substance in the blue box?

A. No, sir, I am only speaking of the nature of the starch granules. That is all we can tell by the microscopic examination, except as to the fibre, etc.; they are substances that can be distinguished by the microscope.

Q. But you could not tell whether that substance was derived from the substance in controversy or whether the substance in controversy was derived from that, could you, from such an examination? You could not tell what was the relative stage in the manufacture of starch occupied by either of those substances—that is, either the substance in controversy in the tin box there, and the other substance in the blue box?

208 A. No, sir. For that purpose, a chemical investigation would be required.

Q. You have not made an examination of any of those substances in the glass bottles marked "A," "B," "C," "D," have you?

A. Not of these identical samples, but of similar products.

Q. You found that in those cases the starch granules had become ruptured?

A. Yes, sir, partly.

Q. And their agglutination is due to the liberation of the starch?

A. Yes, sir, and possibly a slight change by the heat.

Q. What is the substance which causes the agglutination?

A. Soluble starch. Starch is made soluble to a certain extent by heating.

Q. What form does it take?

A. That remains to be settled by the amount of heat used, or by chemical analysis. It all depends upon the character of the heat used. If it is heated to a certain extent, different products would be formed from the starch than if it were heated to a certain other extent.

Q. You are not able to tell from your examination to what extent these have been heated?

A. Yes, sir, we are able to tell that they have been heated sufficiently to rupture the cells.

Q. And that is all that your examination has tended to reveal to you?

A. Yes, sir.

Q. Then, Mr. Falkenau, your statement that the substance in the blue box marked "Tapioca flour" is practically the same as the substance in the tin there, which is the substance in controversy, is derived from the feeling in which you say the gradual attrition of these particles has tended to wear them down?

A. And the microscopic appearance.

209 Q. Still, you are not able to determine whether one of these substances has been subjected to an operation or a process that the other has not?

A. Only to the extent of the change in the cells.

Q. Of the starch cells or granules?

A. Yes, sir.

Q. There are a great many pulverized starches on the market, are they not?

A. Yes, sir.

Q. And they differ, do they not?

A. Yes, sir; in the shape and size of their granules, under the microscope.

Q. Did you find any of these starches differing in about the same extent that these two substances differ?

A. Under the microscope?

Q. Yes.

A. Oh, yes. All variations. The size and shape of the globules are somewhat dependent upon the age of the plant, for instance, and there are various reasons for the variations—probably the difference between the different individual plants and different species of the same family, etc., that the tapioca is derived from. Consequently, you will sometimes find shapes a little different, granules a little larger, etc. But the characteristics are always there.

Q. Is it possible that the substance in the blue box, marked "Tapioca flour from Wm. J. Stitt & Co.," contains any other substance besides, for instance, the dextrine that the substance in the tin, which is the substance in controversy, does not?

A. Yes, sir; it is possible. I am only speaking of it as far as the microscope reveals it.

Redirect examination.

Mr. PAGE:

Q. The release of any dextrine matter would come from the breaking of the cells by heat, would it not?

A. Yes, sir.

210 Q. And as I understand it, your microscopical examination of the article in the blue box, marked "Tapioca flour from Wm. J. Stitt & Co.," reveals the fact that the globules are all intact and not broken?

A. Yes, sir.

Q. Consequently, from that fact you would chemically say that the dextrine has not been released?

A. Yes, sir.

Q. If there were any foreign substances or impurities in starch globules, would they not appear under the microscope?

A. Yes, sir; if they were not soluble. Of course, for microscopic inspection, you treat the substance with water.

Q. For microscopic inspection you put the substance in water?

A. Yes, sir. The slide is wet upon which the substance is put for microscopical examination, and if there was a little sugar in it, or anything like that, it might be dissolved, of course.

Mr. KNIGHT: The dextrine would dissolve, would it not?

A. The dextrine might dissolve; yes, sir.

Mr. PAGE:

Q. But the fact would appear on the face of the globules that they were ruptured, also?

A. Yes, sir.

Q. That fact would not be dissolved?

A. No, sir.

Q. Is tapioca the edible product, the pure starch of the tapioca plant?

A. Pretty near pure.

Q. I understand you to say that tapioca as a food is chiefly valuable because it as a non-irritant?

A. Yes, sir. It is easily digested.

Q. It is very easily digested?

A. Yes, sir; it is easily digested.

Q. And does not affect the stomach in any way by irritation?

A. No, sir.

211 Q. The object would be, therefore, in procuring tapioca, to make it as purely a non-irritant as possible?

A. Yes, sir.

Q. In producing an article for nutritious and medicinal purposes, would it not be the object to remove all of these foreign substances that have been referred to as being in the plant itself?

A. Yes, sir, certainly.

Q. Has anything been left in the article in controversy that would not be left in it in producing the ordinary article of food known as tapioca?

A. No, sir.

Q. It is then absolutely the same article as the article known as tapioca?

A. It is the same, except that morphologically, or so far as the form is concerned, it is different. The others are agglutinated into globules or flakes, or something of that kind. It is something like the difference between flour and farina.

Q. Is a chemical investigation necessary for the purpose of showing the difference between the two samples before you, or are you able by the microscope, and means at your disposal other than an actual chemical analysis, to determine their similarity or dissimilarity?

A. No, sir. The microscopical examination is all that is necessary to fix the fact that it is tapioca, derived from the tapioca plant.

Q. Previous to the starch granules being used for the purpose of being heated to make flake and pearl tapioca, have all of these impurities of which you have spoken necessarily been removed?

A. Yes, sir.

Recross-examination:

Mr. KNIGHT: What nutriment is there in starch?

A. There is very little direct nutriment. It serves the purpose,

however, of supplying certain parts of the body—certain secretions of the human body.

212 Q. Is it not a fact, Mr. Falkenau, that those substances which contain the most starch are more avoided where the food is taken for its nutritious quality? As, for instance, potatoes; is it not a fact that the potato is not regarded for the nutriment which it affords, as being on anything like the same level with other vegetables which do not contain that amount of starch, by reason of the starch which it contains?

A. If you go into that question, I will have to launch off a good ways to explain what we might consider nutriment or not nutriment.

Q. I only ask you the question because you were asked upon re-direct examination with reference to the nutritious elements of the tapioca, and I believe that we have stipulated that the article in controversy is about pure starch. I want to get at what you mean by testifying as to the nutritious element of tapioca as a food.

A. There is a certain amount of carbo-hydrates, such as sugar, starch, and so on, necessary for the human system, just as well as the nitrogenous foods are necessary to it. We cannot live without the nitrogenous foods, of course, for any length of time, but, on the other hand, we cannot live on the nitrogenous alone; the starches are necessary to the sustenance of the human system.

Q. You need a judicious mixture, do you not?

A. Yes, sir.

Q. Which this article does not contain?

A. Yes, sir. But in case you wish to supply a farinaceous food that is necessary to the system in an easily digestible and non-irritant form, then such food as this becomes useful.

Q. Where you are trying to supply a certain particular want rather than to furnish general nutrition for the body?

A. Yes, sir.

213 Q. Is it not a fact that in all starches which are used for laundry purposes all foreign substances are eliminated as far as possible, and the matter has been reduced as nearly to pure starch as possible?

A. Yes, sir, that is true to a greater or less degree, according to the good quality of the starch.

Q. Is not the effort on the part of the starch manufacturer—to produce such a starch, free of all foreign substances?

A. Certainly.

Q. To get as much starch in the substance which he produces as possible?

A. Certainly.

Q. So in the substance in controversy, we have the substance reduced as much to a pure starch as is possible, as far as your examination would lead you to believe?

A. Yes, sir. That is only incidental; it would not be absolutely necessary.

Q. But it is a better starch, the less of the foreign substances it contains, is it not?

A. That is not exactly true. In making starch, we aim not only to remove foreign substances, but to get a good starch for laundry purposes. If you were to leave gluten in the starch, it would be ropy and sticky.

Q. Can you indicate of the ingredients which enter in this root, or the powdered form of the root dry, what could best be left with this starch in order to produce a better substance than we now have?

A. There is very little that could be left in it.

Q. It is in about as good a shape as it could be for laundry purposes, is it not?

A. There is very little that could be left in, in the way in which it is made. In separating the root parts, the fibre from the starch, necessarily the gluten is kept back, the sugar is dissolved—the sugar would not impair the use of it—

Q. (Interrupting.) But it would not assist it any?

A. For nutritious purposes—

214 Q. (Interrupting.) I am talking of it now for laundry purposes.

A. For laundry purposes, of course, the purer starch it is, the better.

Q. Therefore, it is at its greatest value for laundry purposes in its present form?

A. Yes, sir.

Further redirect examination.

Mr. PAGE:

Q. Is there any difference chemically between arrowroot and this substance?

A. Not chemically; there is a difference in the globules.

Q. Arrowroot is very largely used for sick people, is it not?

A. Yes, sir.

Q. And this could be used for the same purpose, could it not?

A. Yes, sir.

Q. The method that is employed for making tapioca out of the tapioca plant, as we understand it to be made by washing, necessarily eliminates all these other substances, does it not?

A. All these other substances.

Q. They could not be left behind; they have got to go, if that method is used, have they not?

A. Yes, sir. Because naturally you could not separate say gluten from anything else insoluble; the gluten must necessarily remain with the fibre if you are going to separate them.

Further recross-examination.

Mr. KNIGHT:

Q. Have you ever made an examination of sago?

A. The real sago?

Q. No, not what we would perhaps understand here to be sago—

A. (Interrupting.) Fictitious sago?

Q. No, not fictitious sago; sago that comes from the sago palm.

215 A. Yes, sir; I have had one sample of it; I don't know where I got it.

Q. In what form was that?

A. In powdered form—flour form.

Q. Do you recollect what the ingredients of it were?

A. I only examined it microscopically.

Q. What did you find?

A. It only differed in the shape of the globules—the starch globules.

Q. Do you know what percentage of starch was contained in it?

A. I don't remember what the percentage of the starch was, no; I did not determine the starch in it myself, but there are statistics about it. I suppose it would go just the same as these, about, because it contains the same elements.

Q. But you did not ascertain exactly what the percentages were.

A. It is ground up, it is pressed through cloths, and otherwise passed through substances of that kind, and the starch proper is only used just the same as this is.

A recess was here taken until 2 o'clock p. m.

Afternoon session.

EVERETT D. JONES, called for the respondents, sworn.

MR. PAGE:

Q. Mr. Jones, you are a member of what firm in this city?

A. S. L. Jones & Company.

Q. How long has that firm been in existence?

A. 35 years.

Q. What has been the business of that firm during that 35 years principally?

A. Principally in the last twenty years importing.

Q. Importing from what countries?

A. From the East Indies, China, and Japan.

Q. How long have you been a member of that firm?

216 A. Twenty years.

Q. Previous to the time that you became a member of the firm, were you in the firm?

A. I was a clerk there; yes, sir.

Q. Your firm, you say, has been engaged largely in importing from China, Japan, and the countries of the East Indies—from the port of Singapore and places of that kind?

A. Yes, sir.

Q. Have you personally had any experience in these countries?

A. I have. I have been in Singapore.

Q. In the course of your business as a merchant in San Francisco, with your connections in China and Singapore, and your experience

personally in being at these places, have you become acquainted with the products exported from those countries to the United States and Europe?

A. Yes, sir; the principal products.

Q. Do you know the product known generically as tapioca?

A. I do, sir.

Q. Commercially, how many classes are there? How are tapiocas divided?

Mr. KNIGHT: I object to the question upon the ground it is not shown to be an importer of the article inquired of.

Mr. PAGE:

Q. Have you imported tapiocas yourself, Mr. Jones?

A. Yes, sir; for 10 or 15 or 20 years.

Q. In large quantities?

A. Yes, sir.

Q. From your knowledge of the markets of the East Indies, China, Japan, and of this country and European countries, what are the commercial designations of the different forms which tapioca takes?

A. There is flake tapioca, medium pearl tapioca, small pearl tapioca, and tapioca flour.

217 Q. For how long a time have you known of the commercial designations which you mention?

A. Ever since I have been importing—for the last 15 or 20 years.

Q. Will you look at the article contained in the tin box here, which it is agreed is the product of the tapioca or manioc plant, and state what is the commercial designation of that article.

Mr. KNIGHT: I object to the question upon the ground that the question does not state at what place a commercial designation is called for, whether foreign or American.

Mr. PAGE:

Q. What is the commercial designation in the place of production, in foreign countries, and in the United States?

A. Tapioca flour.

Q. It is the same in all places?

A. Yes, sir.

Q. Have you ever heard any other designation in the import trade of this country for that article, except tapioca flour?

A. No, sir.

Cross-examination.

Mr. KNIGHT:

Q. Mr. Jones, have you ever imported that substance, as illustrated by the contents of the tin box before you?

A. Yes, sir.

Q. How frequently have you imported it during the last six years?

A. Once.

Q. What did you import it for?

A. We imported it for a party here who wanted some tapioca flour, and in looking at the tariff we found that tapioca flour was free. We imported it for him, I think, to take the place of wheat flour for some particular purpose. We brought it in here, and the Government assessed a duty upon it as starch.

Q. You say that the Government assessed a duty on it as starch?

A. Yes, sir.

Q. Do you know how long ago it was that you made that
218 importation?

A. I don't know exactly.

Q. Was it before the McKinley act went into force?

A. I think it was during the McKinley act.

Q. How long did you say you had been engaged in the importing business?

A. About 15 or 20 years.

Q. Have you had occasion to import this substance in controversy at all frequently?

A. I am not quite certain of that, but I am under the impression that we did import it many, many years ago—probably 15 or 16 years ago.

Q. You say you do not remember whether or not it was this stuff that you imported?

A. I am under the impression that it was, but I would not like to swear to it, because I am not absolutely certain.

Q. Then you do remember one importation of this stuff that you say was imported to take the place of wheat flour for some reason or other?

A. Yes, sir; as far as I know. Of course, they did not tell me exactly what they wanted it for.

Q. For whom did you import it?

A. I would rather not say, because sometimes people do not want those things known.

Q. In what line of business; grocery or cloth-manufacturing business?

A. Not in the cloth-manufacturing business.

Q. I merely want to get at what use it was put to.

A. As an adulterant—that is all.

Q. Do you know whether or not the substance contained in this blue box, which is the same substance that is marked "Tapioca flour from Wm. J. Stitt & Co.," is or is not the same substance that is in the tin box which has been shown to you?

Mr. PAGE: Assuming that it is the product of the tapioca plant.

219 A. (After examination.) If that is the product of the tapioca plant, it is tapioca flour.

Mr. KNIGHT:

Q. And you state that that is tapioca flour?

A. Yes, sir. That is, presuming that it is the product of the tapioca plant.

Q. Do you call that tapioca flour, too? (Referring to the sample in the tin box.)

A. (After examination.) With the same presumption, yes, sir.

Q. Do you say that those are the substances which have been subject to the same process or degrees of manufacture?

A. I should judge so from looking at them.

Q. You simply judge from the looks of them, without feeling?

A. (After feeling of the sample.) This one seems a little the finer of the two.

Q. Would that make any difference in your answer?

A. No, sir.

Q. Have you imported tapiocas in any other form?

A. Yes, sir, I have imported flake tapioca, small pearl tapioca, and medium pearl tapioca.

Q. And about all of your importations have been of those forms, with the exceptions you have mentioned?

A. Yes, sir.

Q. Are you now engaged in importing tapioca?

A. Yes, sir.

Q. You do not know chemically what the composition of this stuff in the tin box is—that is the substance in controversy?

A. No, sir, I do not know anything about it.

Q. Have you heard it called here by persons who are engaged in handling tapiocas or groceries—wholesale groceries—as China starch?

A. This particular article?

220 Q. Yes.

A. No, sir.

Q. You have never heard that name applied?

A. I don't know what it is applied to, but I have heard of China starch.

Q. What would you understand by that?

A. I would understand that by that was meant rice flour, or partly rice.

Q. That is, you mean that it is a flour made from the rice; it is not simply called rice flour, but is a flour made from rice.

A. I would not like to swear to that, because I do not know exactly.

Q. That is what you understand the term "China starch" to be applied to?

A. Yes, sir, that is what I understand.

Q. But you have not handled it?

A. No, sir, I have not.

Redirect examination.

Mr. PAGE :

Q. You understand that there is something which is in use in San Francisco which is locally known as China starch. Is that it?

A. Yes, sir.

Q. There is nothing imported by the name of China starch that you ever heard of?

A. No, sir.

Mr. KNIGHT:

Q. The Chinese are the people who now do most of the importation of the substance in controversy, are they not?

A. I don't know what their importations are.

Q. All you know, then, is from your own experience?

A. Yes, sir.

W. E. CUMBACK, called for the respondents, sworn.

Mr. PAGE:

Q. Mr. Cumback, what is your business?

A. I am manager of the Pacific branch of the Troy Laundry Machinery Company.

221 Q. How long have you been engaged with that company?

A. Altogether pretty close to eight years.

Q. During that time, as an employee of that company, have you been engaged in the business of distributing and selling the supplies that are used in laundries?

A. Yes, sir; everything used in steam laundries. We do not cater much to hand laundries.

Q. How extensive is your acquaintance with the laundry system of the United States, and how extensive has it been during those eight years?

A. For the first three years, or very nearly three years, I traveled for the Troy Laundry Machinery Company east of the Mississippi river, and got a general acquaintance in that way with the steam-laundry trade of that section of the country, and for the last five years I have been here on this coast, and have had the territory west of Denver under my charge.

Q. Do your duties take you into all parts of the different States, wherever there are steam laundries worked?

A. Yes, sir; into different States.

Q. And does that include the distribution of starches and things of that kind?

A. Yes, sir; it includes the handling of machinery and supplies and specialties for laundry use.

Q. Since you have been in California, have you become more or less familiar with an article that has been termed here as China starch—a substance that is used by the Chinamen?

A. No, sir; I don't know that I have ever seen a sample of the article.

Q. Do you know whether or not any such article has ever been in use throughout the United States in different laundries which you have visited?

A. No, sir; I never saw it, and I never heard of it.

Q. You never heard of it, you say?

222 A. I never heard of it until I came to this court.

Q. Do you know the qualities of the article for steam-laundry purposes?

A. As far as it relates to the corn or wheat starch, I do.

Q. I mean this article known as China starch, or which has been spoken of here as China starch and which you have heard of as being used on this coast by Chinese laundrymen. Do you know what the quality of that starch is for use in steam laundries?

A. Not having seen it tried, I could not say positively, but from my experience in starches, I would infer that it would be difficult to use it, owing to the roller of the machines. I would think that this starch would not work with the heated rollers.

Q. In what way would it be defective?

A. I would think it would stick to the rollers, and for that reason it is essential for those who use steam laundries to use either a wheat or a corn starch.

Q. Can you tell the essential quality in the wheat or corn starch that makes it act better with your machines than anything like this?

A. Only that the less chemical substance there is in a starch, the better it is; the less of impurities, the better for it. If you have chemical impurities in starch, it is not good for laundry purposes.

Q. How much of the laundry work of the United States is done by steam laundries?

A. I think I would be safe in saying three-fifths.

Cross-examination.

Mr. KNIGHT:

Q. Mr. Cumback, if you were told that China starch was almost a pure starch, and contained very few other chemical ingredients, would you still say that it would have a tendency to stick to

223 the rollers and not be as effective for use in steam laundries as wheat or corn starch?

A. I don't know that I could say that. I have never known the starch to be tried in any steam laundry.

Q. It is entirely a supposition on your part, then?

A. Yes, it is entirely a supposition on my part.

Q. Is there anything upon which you can base that supposition?

A. Only on this fact: That I have known corn starches, where they contained chemicals, to give this trouble of sticking to the rollers. I do not know whether there is any chemical ingredient in this starch of which you are speaking or not.

Q. You never have had occasion to have an analysis made of it?

A. No, sir.

Q. Therefore, you would be speaking in the dark as to what its effect would be on the rollers in steam laundries, if used there?

A. Yes, sir. I could not absolutely say.

Q. Are you acquainted with all the starches that are used in steam laundries?

A. I think I am, yes, sir.

Q. Is it not a fact that at least on this coast—I do not know whether the fact is so in the eastern portion of the country, or not, but at least on this coast—that this China starch is used by a few steam laundries, perhaps not by itself, but mixed in with other corn or wheat starches, for the purpose of starching certain kinds of clothes?

A. Not to my knowledge, no, sir.

Q. It may be used without your knowing it, may it not?

A. It may be, but my acquaintance with the steam laundries of this coast is so thorough, and my business relations with them are so intimate, that I think I would know it if there was.

224 Q. Do you supply all the steam laundries with their materials?

A. No, sir, not all of them.

Q. To what extent do you supply them?

A. Probably four-fifths of the steam laundries on this coast.

Q. Might it not be a fact that the other one-fifth were using this China starch?

A. I would not want to say that they are not, but I don't think they are.

Q. You do not know what starches are used in laundries that are not worked by steam, do you?

A. The French laundries are most all hand laundries. I do not think they use anything but corn and wheat starch. We sell considerable starch to them.

Q. How about the Chinese laundries?

A. We do not sell to them.

Q. Do you know what they use?

A. No, sir. I never have had any means of knowing what they use. But I have heard of China starch.

Q. Is it not a fact, Mr. Cumback, that various laundries will mix starches, according to the ideas, perhaps, of the men who may be the managers of the laundry?

A. That has been done a great deal, but in the last year or two, since the mixing has been done, it has been confined almost entirely to wheat and corn.

Q. That is within the last year, you say?

A. Within probably two years back. The thin boiling starch is comparatively a new commodity on this coast for laundry use.

Redirect examination.

Mr. PAGE:

Q. The advantage of the wheat starch is, that immediately on touching the hot water, it becomes available, does it not?

A. The advantage is in its thin cooking qualities. The—

225 Recross-examination:

starch boils up almost as thin as water, and it penetrates the garment so much quicker than the corn starch does, that it is better on

that account. That causes it to be more thoroughly appreciated, as to its labor-saving quality.

Q. It is more expensive, too, is it not?

A. Yes, sir; it is more expensive than the corn starch.

Mr. KNIGHT:

Q. Does it not give more stiffness to the article than the corn starch?

A. Yes, sir.

Q. The corn starch gives more gloss, does it not?

A. No, sir; but it gives a softer and more pliable finish than the wheat starch does, and that is the reason they mix the two—so as to get the pliability and stiffness at once.

WILLIAM IRELAND, called for the respondents, sworn.

Mr. PAGE:

Q. Mr. Ireland, what is your business?

A. Merchandise broker.

Q. How long have you been in that business in San Francisco?

A. Twenty years.

Q. Have you devoted yourself to any extent to the brokerage business for the products of the East Indies and China?

A. Yes, sir; I have done considerable in that way.

Q. During all this twenty years?

A. Yes, sir.

Q. In the course of that time, have you become acquainted with the various products of those countries, by either meeting them personally or by your study of the market reports, etc.?

A. Yes, sir; I have acquainted myself with the products of those countries, just as much as was necessary for a broker to handle goods intelligently.

Q. Have you dealt in tapioca?

A. Yes, sir.

226 Q. Tapiocas come from the East Indies, do they not—from Singapore?

A. Yes, sir; they come mostly from Singapore by way of Hong-kong.

Q. Is there any division of the name tapioca in the different forms?

A. Yes, sir; tapioca is put up in different forms, though made from the same material. It is a manufactured article, really, as we have it here.

Q. What are the different forms in which you know it to exist commercially—as a matter of export from foreign countries to this country?

Mr. KNIGHT: I object to any designation that is not a commercial designation in this country. The designation in foreign countries is immaterial.

A. Flake and pearl, and there are various sizes of pearl, small, medium and large; and tapioca flour.

Mr. PAGE:

Q. You have mentioned tapioca flour. Is that applied to any article of import from your knowledge of the markets of the United States?

Mr. KNIGHT: I object to the question upon the ground that it has not been shown that the witness imports the article in controversy.

A. We have heard of tapioca flour as being imported here.

Mr. PAGE:

Q. And from the market reports do you know whether it is imported in other places in the United States?

Mr. KNIGHT: I make the same objection, and upon the further ground that it is hearsay.

A. Yes, sir; it is imported into the Eastern States as well as here.

Mr. PAGE:

Q. Do you know the article called tapioca flour when you see it?

227 A. Yes, sir; it is not very easy to tell it, unless one knew just where the sample came from, because it resembles other things.

Q. Take the sample in the tin box, which is the matter in controversy here. If you assume that that is the product of the tapioca plant, would you call that tapioca flour?

A. (After examination.) Yes, sir, I certainly would, if that is the case; if it is the product of the tapioca plant.

Q. That is the article which is an article of commerce known as tapioca flour, so far as you know?

A. It is known by that name—in that line.

Q. Did you ever hear of that as an article of export from the East Indies or China—ever hear it called by any other name than “tapioca flour”?

A. Over there?—no, I don't know it by any other name, as far as these markets are concerned. It is brought into this market under another name.

Q. Under what name?

A. Under the name of China starch.

Q. Did you ever know of anybody buying this substance for importation into San Francisco under the name of “China starch,” or do you mean that it is simply called China starch in San Francisco?

A. It is known as China starch in this market.

Q. In San Francisco?

A. In San Francisco.

Q. Is it known as China starch as between the importers and their foreign sellers?

A. Not to my knowledge.

Q. Did you ever see the name "China starch" in any market report from any part of the world?

A. No, sir, I have not.

Cross-examination.

Mr. KNIGHT :

Q. The substance in controversy is imported into this port under various names, is it not?

A. It seems to be.

228 Q. Some half a dozen different names are applied to it?

A. I do not know that there are as many as that.

Q. It is called rice flour, and root flour, is it not?

A. It is called tapioca flour and root flour—those are the names that I know it by.

Q. And also called sago flour?

A. Yes, sir, sago flour—on the same principle that tapioca is called sago—small pearl tapioca is called sago sometimes. That is the idea.

Q. It is a starch, is it not?

A. It is used for that purpose in some cases.

Q. Have you ever imported this substance in controversy?

A. No, sir.

Q. You never have?

A. No, sir.

Q. You have imported tapioca, though, the pearl and flake?

A. I have sold it for the importers. I am merely a distributor of the goods when they get here, and not an importer exactly.

Q. You do not do any importing yourself, then?

A. No, sir, not at all.

Q. So your acquaintance would be confined to the article that you handle here in this market, would it not?

A. Well, my knowledge of what is being done in other markets, too—it is not confined entirely to this market.

Q. But you have never had occasion to handle the subject of the controversy here?

A. I have sold it as a broker.

Q. Under the name of "China starch," have you not?

A. Yes, sir.

Q. Do you recollect to what class of people you sold it?

229 A. I have sold it from the Chinese importer to the whole-sale grocer principally—altogether, I think. They distributed it, I do not know where.

Q. Then in handling this product, you would be principally in contact with the Chinese importer?

A. Yes, sir.

Q. They are the people who do import this?

A. Yes, sir, principally.

Q. Is it not a fact that there are very few who have imported this stuff, other than perhaps experimentally.

A. I do not know of any other importations. Doubtless there were some, but they did not come under my knowledge and observation.

Q. The Chinese import this article for laundry purposes, do they?

A. Principally. It is doubtless used for other purposes—it could be used for other purposes.

Q. It is used for candy, is it not? It is used in such candies as gumdrops in the place of starch, is it not?

A. I do not know that, but I presume it could be used in that way.

Q. Do you recollect for what other purposes it is used?

A. I should judge it could be used in somewhat the same way as people use corn starch.

Q. Do you mean the uses to which corn starch is put in a culinary way?

A. Yes, sir.

Q. Is it not a fact, Mr. Irelan, as far as you are acquainted with the custom of those who import this stuff, that it comes under the head of root flour, sago flour, and rice flour more frequently than it does under the term "tapioca flour?" Is not the term "tapioca flour," a comparative rare term, and one which has been applied to this substance in the past few years by those who import it?

A. No, sir. My memory goes back many years, and I
230 recollect that term "tapioca flour." I think that from maybe twenty years ago I knew it as "tapioca flour."

Q. Do you know a substance called by the term of "sago flour," or is it this same substance?

A. Well, sago flour, or sago made into flour, would present a somewhat similar appearance to this. I should think it would be a little darker in color. I should imagine so, because the thing itself has a yellowish color, instead of being absolutely white, like tapioca.

Q. When you say flour, do you mean simply made into a powdered substance?

A. Yes, sir.

Q. Regardless of what the chemical composition of the substance is?

A. Yes, sir.

Q. So, because this is powdered, you would say it is a flour?

A. Yes, sir. It may have been manipulated. It may not be just the tapioca ground up, but may possibly be manipulated. That I could not tell, of course, without analysis; it would require some one to analyze it, to tell what it was. This tapioca flour that is used by the Chinese for starch is not as desirable for that purpose as the wheat or corn starch.

Q. Why is that?

A. It does not seem to possess quite the same property.

Q. Have you ever had occasion to try it in that way?

A. No, sir, but I am told by parties who have tried it, that that is the case.

Q. So your information upon that would be hearsay?

A. Yes, sir.

Q. You have not had any practical experience with it, in other words?

A. No, sir.

Redirect examination.

Mr. PAGE:

Q. You were asked whether this tapioca flour sometimes comes in under the name of root flour or sago flour. Is that confined
231 to the local market of San Francisco, or do you know whether it passes under the names "sago flour" and "root flour" in other places?

A. My impression is that it passes under those names in places other than San Francisco.

Q. Do you know whether or not it is a fact that it does?

A. I could not swear to that.

Recross-examination.

Mr. KNIGHT:

Q. I suppose your knowledge in that regard would be based upon the same sort of facts that your knowledge is concerning this tapioca flour.

A. A broker of course tries to handle his goods intelligently, but he does not know all that is to be known about a thing. There may be something, perhaps, that it hardly pays him to go into. Still, with anything that I handle, I try to know a good deal about it.

W. TAPPENBECK, called for the respondents, sworn.

Mr. PAGE:

Q. Mr. Tappenbeck, what is your business in San Francisco?

A. I am connected with S. L. Jones & Company, importers.

Q. How long have you been connected with them?

A. About ten years.

Q. Have you ever been in China or Singapore?

A. Yes, sir.

Q. Connected with business houses there?

A. I went in the interests of our firm.

Q. That firm deals largely in Chinese and East Indian goods, does it not?

A. Yes, sir.

Q. Tapiocas among other things?

A. Yes, sir.

Q. Have you made yourself familiar with the article of tapioca, as known in the markets?

A. Yes, sir.

232 Q. Is tapioca a product of the East Indies?

A. Yes, sir—that is to say, of the Malay peninsula.

Q. It is principally exported from what place?

A. Singapore.

Q. Do you know the different names under which tapioca is sold or exported, and imported into this and foreign countries, from your knowledge of the trade?

A. Yes, sir; pearl, flake, and flour.

Mr. KNIGHT: I object, upon the ground that the witness is not shown to be acquainted with the commercial name of the importation in question, as known to importers.

Mr. PAGE:

Q. From what do you and other merchants gather your information with reference to any particular article in which you are dealing?

A. By handling them. I have handled lots of it.

Q. Did you get your information before you handled them—did you get any information from market reports and things of that kind; and from correspondence?

A. Yes, sir, correspondence and market reports.

Q. And meeting people in the same kind of business, I suppose.

A. Yes, sir. And by actually handling the goods. It is our business to study it.

Q. You say that this tapioca is divided into three named classes?

A. Yes, sir.

Q. Pearl, flake, and flour?

A. Yes, sir.

Q. From your investigations and knowledge, and the knowledge that you have acquired on the subject, do you know whether this article which you have mentioned as tapioca flour is known by that name in the markets of the United States—in the ports of entry?

A. I can only tell as far as New York is concerned, but I know by circulars.

233 Q. How is it in New York? Is it known by that name there?

Mr. KNIGHT: I object to the question upon the ground that it has not been shown that the witness' knowledge is derived there. In fact, I make the same objection to all that line of questions, and upon the ground that it is hearsay.

A. I am unable to answer that; I don't know what they call it in New York, personally.

Mr. PAGE:

Q. Do you know from your knowledge of the market circulars?

A. Yes, sir—and that is all.

Q. What is it called there? Is it called by the same name—tapioca flour?

A. I only know that it has been imported there, but we do no

business there. I know by the circulars from Singapore that it is exported to New York.

Q. Under the name of "tapioca flour"?

A. Under the name of "tapioca flour."

Q. Is it exported to other countries under the name of "tapioca flour"?

Mr. KNIGHT: I make the additional objection that the foreign designation is not material in this case.

A. Yes, sir.

Mr. PAGE:

Q. Have you ever heard any other name given to the article which you know as tapioca flour by importers?

A. Here it is imported by the Chinese, but I cannot say that positively.

Q. You believe the article is imported by the Chinese? Do you know under what name it is imported by the Chinese? Is it imported under the name of tapioca flour, or sago flour, or any other name, or do you not know?

A. If the article they import here is tapioca flour, it is brought under the name of root flour. They import no tapioca flour to my knowledge—the Chinese; that is, not under that name.

Q. Not under that name, you say?

A. No, sir.

Q. But you do not know whether they do import tapioca flour or not?

A. That I cannot tell you.

Q. Will you look at the article in controversy here, which is contained in that tin can, and say whether, assuming that this article is the product of the tapioca plant, it is what you have known as tapioca flour?

A. Assuming that to be the product of the tapioca plant, I should call it tapioca flour, yes, sir.

Q. That is what you understand to be commercially known as tapioca flour?

A. Yes, sir.

Q. In the places where you have known it?

A. Yes, sir.

Cross-examination.

Mr. KNIGHT:

Q. Mr. Tappenbeck, just what is your connection with the firm of S. L. Jones & Company?

A. I have an interest in the business.

Q. Are you the person in that firm who attends to the importation of all its articles imported?

A. I attend to the ordering and buying, yes, sir.

Q. Does Mr. E. D. Jones do that with you, or has he another branch of the business to attend to?

A. That is my department. He superintends the business, but he attends more particularly to the auction part of the business.

Q. So you are the one who would attend to the importing of any article from the East Indies, are you?

A. Yes, sir.

Q. Mr. Jones would not be brought so much in contact with that line of the business?

A. No, sir.

Q. And he would practically get his information from you?

235 A. I would not say that, because he was in the business ten years before I entered it. I think he has been in that business for about 23 years, and I have only been there 10.

Q. During the ten years that you have been in there, have you had charge of this department?

A. Yes, sir.

Q. You import tapioca, pearl and flake, do you?

A. Yes, sir.

Q. At the present time?

A. Yes, sir.

Q. Have you ever imported any of the substance which has been shown to you, and which is contained in that tin?

A. Yes, sir.

Q. When?

A. I should say about four years ago.

Q. How much did you import?

A. Just an experimental lot of, I think, ten boxes or twenty boxes—not exceeding twenty.

Q. Was it from Singapore or Hongkong?

A. Singapore.

Q. Direct?

A. Direct. I bought it myself.

Q. You bought it at Singapore?

A. Yes, sir, and shipped it to Hongkong.

Q. Do you know whether it was transhipped at Hongkong?

A. Yes, sir, it must be. There are no direct steamers coming from Singapore here.

Q. Under what name did you ship that?

A. Under the name of tapioca flour.

Q. Have you ever shipped any other quantity besides that of this stuff?

A. Not since.

Q. And never did before, to your knowledge?

A. To my knowledge, not before.

Q. Do you know for what purpose that was intended, without wanting to go into the details of the business; for what purpose it was ordered?

236 A. We had intended to sell it as a substitute for starch.

Q. For laundry purposes?

A. No, sir, for chocolate purposes.

Q. It was imported for that reason ?

A. Yes, sir.

Q. This substance in controversy is imported almost exclusively into this port by Chinamen under various names, is it not ?

A. If the article the Chinamen bring in be tapioca flour, yes ; I cannot say that it is, though.

Q. Have you ever dealt with the Chinese merchants in this substance ?

A. No, sir, we have not.

Q. Then your only contact with it has been in this one importation that you have mentioned ?

A. I cannot say that. We once had a consignment from Hongkong—not on our own account, but it was consigned to us. If I recollect right, it was invoiced as root flour. Whether it was sago or tapioca flour I can't say. I know we had to pay duty on it.

Q. Do you know the amount of the duty you paid on it ?

A. I cannot tell you. It didn't come from Singapore ; it was from Hongkong.

Q. How did it resemble the substance in controversy—closely ?

A. As far as I remember, yes.

Q. Do you recollect how you happened to handle it ? Do you know for what uses it was imported ?

A. As far as I remember, we sold it to a Chinese firm here—Sing Kee & Company.

Q. Do you know to what use they put it ?

A. I presume it was used for laundry purposes.

Q. You do not know what the chemical composition of that stuff is, do you ?

A. No, sir.

Q. You call it flour, because it is a powdered substance of the tapioca plant.

237 A. What I bought was a powdered substance of the tapioca plant. I don't know what the analysis of it is.

Q. Would you call any powdered substance of the tapioca plant a tapioca flour ?

A. Yes, sir.

Q. So to your mind, under your idea of the designation of this class of articles, you would divide the entire product of the cassava plant into three kinds : Into the flake of various kinds, large, medium, and small ; into the pearl of various kinds, large, medium, and small ; and you would put all the rest under the designation, if it were powdered, of tapioca flour ?

A. I would.

Q. Is it not a fact that the tapioca pearl is frequently not tapioca, or have you ever had occasion to know that ?

A. Tapioca pearl ?

Q. That a pearl tapioca is not a product of the tapioca plant ?

A. You are probably thinking of sago.

Q. No.

A. No, sir ; it is not. Pearl tapioca, to my knowledge, is always the product of the tapioca plant.

Q. You never heard of a case where an article had been shipped into this port as pearl tapioca, which was not the product of the tapioca plant?

A. No, sir; I have never known of it.

Q. The product of the tapioca plant sometimes comes into this port under the term "sago," does it not? That is, are not the terms "sago" and "tapioca" loosely used?

A. Yes, sir; they are here, but it is an entirely different plant. Sago is an entirely different thing from tapioca.

Q. That is true, I know, but is it not a fact that the terms "sago" and "tapioca" are used interchangeably at times, and that the product of the tapioca plant is called sago, or this powdered substance is called a sago flour, when it really is not from the sago palm at all, but is from the tapioca plant?

238 A. Small pearl tapioca is called in this market sago—it is very small.

Mr. PAGE:

Q. It is sometimes called "seed tapioca."

A. Yes, but here it is called sago. It is entirely wrong, though, because it is not sago.

Mr. KNIGHT:

Q. Does not that go to show that the terms "sago" and "tapioca" are not always correctly applied to the product of the sago palm and the tapioca root?

A. In this market; yes.

Q. You have no acquaintance with the eastern markets, have you? That is, you do not do business with importers at eastern points in this country?

A. No, sir; not in tapiocas.

Q. Your knowledge of the commercial designation of these tapiocas, then, as far as that is concerned, would be confined to this port.

A. As far as that is concerned; yes.

Redirect examination.

Mr. PAGE:

Q. That is, your personal knowledge?

A. Yes, sir.

Q. The importation that you speak of as having been made experimentally by your firm was made under the name of "tapioca flour"?

A. Yes, sir.

Q. And was sold as such?

A. It was sold as tapioca flour; yes.

Mr. KNIGHT:

Q. To the Chinese merchants, you say?

A. No, sir; this was not sold to Chinese merchants. I am talking of a lot that was bought in for chocolate purposes.

R. H. SWAYNE, called for the respondents, sworn.

Mr. PAGE:

Q. Mr. Swayne, your business in San Francisco is that of a custom-house broker?

A. Yes, sir.

239 Q. And warehouseman?

A. Yes, sir.

Q. And importer?

A. To some extent we appear as importers; yes.

Q. And general financial agent?

A. Yes, sir; we appear as importers in many cases.

Q. How long have you been engaged in your business?

A. Over twenty years.

Q. All the time in this market?

A. Yes, sir; and in the same business.

Q. And during all of this time your business has been in connection with the custom-house of San Francisco?

A. Yes, sir.

Q. Acting as a broker for importers?

A. Yes, sir.

Q. Do you know the article in controversy here?

A. Oh, yes.

Q. Have you known it during all of those 25 years?

A. All of the time.

Q. When was your attention first called to it?

A. What called our attention to it first was the charging duty upon it.

Q. At the time that your attention was first called to it, was the article admitted on the free list?

A. It was admitted on the free list; yes, sir.

Q. At what time was it that your attention was called to the fact that duties had begun to be levied upon them?

Mr. KNIGHT: I object to this line of examination upon the ground that it is irrelevant, incompetent, and immaterial as to what the former duty was, or whatever duties were formerly charged on the article in controversy.

A. I should think it was about 1883.

Q. That was previous to the passage of the tariff act of 1883.

240 A. It probably was, but that is of course so long ago that any direct statement would be out of the question. I should judge from the record that it was.

Q. As a matter of fact, up to the time that your attention was called to the fact that a duty had begun to be levied upon this article, it had been admitted free at the custom-house?

A. Yes, sir; it had been.

Q. After duties had begun to be levied upon the article, on what ground were they levied—that it was starch?

A. That it was starch; yes, sir. That has been alleged a number of times.

Q. After this fact, was the attention of the department called to the fact that it was a tapioca flour and not starch, and the claim made that it was free?

Mr. KNIGHT: I object to all question- in this line upon the grounds I have already stated.

A. Yes, sir; the first time it seems to have been called to their attention that it was starch was in 1883. Prior to that the tapioca had been called to the attention of the Treasury Department, and they made a decision, No. 3161—I refer to a synopsis of the Treasury decision, under that number. In that case the attention of the department was not called to it that it was starch, but there their attention was directed to tapioca. At that time they stated that upon investigation they found that tapioca was prepared in three forms, namely, flake, pearl and flour.

Q. Never mind the details. What was the result of the decision?

A. The decision was that tapioca flour was free.

Q. That is found where?

A. That was in 1887.

Q. Where was it found?

A. It is found in Synopsis of Treasury Decisions, No. 3161.

241 Mr. KNIGHT:

Q. Was that a decision rendered at this court?

A. It was a decision directed to the collector of customs at the port of Boston, but the instructions to all collectors to be governed by the decisions, and their publication.

Q. You are not testifying from your own personal knowledge of the facts of this case, but simply from what the record there shows?

A. Yes, sir. I was here at that time and interested in these matters, but I do not speak from recollection, but from what is here shown.

Mr. PAGE: We offer this decision No. 3161 in evidence. I assume, Mr. Knight, that it is agreed that it may be read from the book, subject to objection.

Mr. KNIGHT: I will agree that all decisions which bear upon this subject may be used upon the argument. There are a number of conflicting decisions, and whichever way they may run they may be used by either party upon the hearing, without any necessity of their being introduced in evidence here at all.

Mr. PAGE:

Q. After the rendition of this decision by the Treasury Department, was this article in controversy admitted free or was it dutiable?

A. It was always admitted free.

Q. For how long a space of time?

A. Speaking by our record I think it was admitted free until after the act of 1883. Then the collector at this port took up the decision and charged them duty.

Q. Was the fact that the collector of the port here was collecting duty on it again presented to the department?

A. That was again presented to the department.

Q. At what date?

242 A. Their decision was dated July 27, 1883, and was directed to the collector of customs at San Francisco, and the department notified him that, under the free list, flour made from tapioca, cassava, or cassava root, might be admitted free of duty, without regard to the use for which it was ultimately intended.

Q. Was that directed to the collector of the port at San Francisco?

A. It was, and it was directed that the provision of the tariff for other starch was not to be applied to the products of tapioca.

Mr. KNIGHT: Do you consider it necessary to go through with those decisions? We can use them upon the argument without the necessity of that, under my stipulation that they may be used.

Mr. PAGE: I do not care to have the reports themselves in evidence, excepting that I want to get the dates in.

Mr. KNIGHT: The facts will show that in the reports, will they not?

The WITNESS: There are only one or two cases here.

Mr. PAGE: I do not want the contents of the decisions at all, but simply what happened in the Treasury Department up to 1890 with reference to this article.

Q. You have shown that under the act of 1883, the collector of this port was notified or directed that tapioca flour was free. What was the number of that synopsis?

A. Synopsis 5802.

Q. How long did that continue?

A. That continued for some time; I think until 1886—it continued a few years, or for quite a space of time. Then the matter was taken up again.

Q. That is, you mean to say that duties were again imposed?

243 A. Yes, sir, the second time under the same tariff act.

That is my recollection, and it also agrees with our memorandum. This was also from San Francisco.

Q. Was it an appeal taken from the action of the collector in enforcing the duties?

A. Yes, sir.

Q. What was the result?

A. That was dated October 25, 1886, which I guess was very near the time that the collector again charged duties—or about that time.

Q. And that is found in what?

A. In Synopsis of the Secretary's Decisions, 7971.

Q. And the result was what?

A. The result was that the collector was notified that although it appeared—

Q. (Interrupting.) Never mind the "although;" just give us an answer to the question. Was tapioca flour held free?

A. It was held free.

Q. After that it continued to be free for how long?

A. It continued——

Mr. KNIGHT:

Q. (Interrupting.) Did it say how long the duties had been continued to be imposed up to the time that that was made?

A. I think it was not a great many months—that was my recollection.

Mr. PAGE:

Q. How long did that continue before the question again arose?

A. I think that continued in San Francisco until the new tariff act applied. But in the meantime the collector at New York took up the matter, and he was also notified by the Treasury Department that, although it was used for starch, that the rate of duty applicable to other starch did not apply, and that flour made of tapioca, although chemically a starch, was to be admitted free. That incurred in the meantime—in 1888.

Q. And that is found where?

244 A. In Synopsis of the Secretary's Decisions, No. 9031.

That brought us down until the tariff act of 1890.

Q. How long after the tariff act of 1890 was this stuff admitted free before any question was raised as to whether it was dutiable or not by the Government?

A. I think no opportunity occurred anywhere for the collectors, to do anything, and on the 13th of October, about two weeks after the passage of the act, the Treasury Department notified the collectors throughout the United States that the matter should be investigated and duty collected from the starch, possibly.

Q. If the investigation showed that duty should be collected, the order was that the collectors must collect it?

A. Yes, sir, and they all at once proceeded to collect duty upon it as starch.

Q. Do you know whether this article, from your knowledge and from investigations you have made, has been imported into places in this country other than San Francisco?

A. I have investigated, and I know that it is.

Q. How long has it been imported elsewhere?

A. I find that it has been imported elsewhere—well, it goes back for more than twenty years; I have looked it up that far; I do not know how much further.

Q. Is this article being imported into the eastern ports at the present time?

A. It is; I so find.

Q. From your knowledge of the business, do you know whether it is a dutiable article in the East, or is not dutiable?

Mr. KNIGHT: We make the same objection as was before made; it is irrelevant, incompetent, and immaterial.

245 A. I know it has been admitted free in New York, especially since the Treasury Department directed that it be passed through, acquiescing in the decision in the United States court for the district of New York.

Cross-examination.

Mr. KNIGHT:

Q. You belong to the firm of Swayne & Hoyt, who are interested in this controversy, do you not?

A. Yes, sir.

Q. Your investigation with reference to the importation of this stuff for points other than San Francisco has been made since this controversy arose?

A. My investigations were made prior to the institution of any suit, or the taking up of the matter.

Q. Prior to the importation of this merchandise?

A. Prior to the importation of this merchandise, yes, sir.

Q. And they were made in what way?

A. Made because I noticed the decision in the United States—

Q. (Interrupting.) In what way? By correspondence?

A. By correspondence, and by sending and making inquiries, and so on.

Q. It is hearsay then? You do not import the article into New York, or into any eastern ports, do you?

A. No, sir, but I had people interview those who did, and I had correspondence with those who did.

Q. And had samples sent on?

A. And had samples sent on, yes, sir, and investigated them, and looked into the matter thoroughly.

Q. You have only imported at this point?

A. We do not consider ourselves as importers.

Q. But you have been brokers at this point for the importers?

246 A. Yes, sir, that is so. We have correspondence in New York with brokers like ourselves, and we had them take the matter up, and I also saw them about it. And I was in New York and investigated the thing personally.

Q. When was that?

A. That was at the time of the Townsend decision.

Q. In this controversy the houses who made the importation are all Chinese houses?

A. Yes, sir. I do not represent them all, but we represent most of them.

Mr. PAGE: That is the case for the respondents.

Mr. KNIGHT: If they are not already in evidence, we shall offer the invoices relating to the importations in question—the Chinese and English.

Mr. PAGE: We object to them as irrelevant and immaterial.

Mr. KNIGHT: We may want to introduce some further testimony, Mr. Page, as to what the matter in the blue box is. With that

exception, I do not think there is any further testimony to be offered for the Government at this point.

An adjournment was here taken, subject to the taking of such further testimony in the East, or the admission of such eastern samples of tapioca flour, or the substance in controversy, as may be offered by either side.

SEPTEMBER 14, 1896.

Before Hon. Joseph McKenna, judge.

MR. KNIGHT: I have agreed with Mr. Page that he may produce Mr. Falkenau, and ask him one or two questions.

LOUIS FALKENAU recalled.

MR. PAGE:

Q. Mr. Falkenau, do you remember that during the examination of Mr. Bates he produced an article which he called tapioca flour, which he said he had brought from New York, and of which a sample was given to you for microscopical examination.

247 A. Yes, sir.

Q. Did you make that examination afterwards?

A. Yes, sir.

Q. What was the result of your examination as to whether that article examined by you was the same article that has been introduced as the substance in controversy in this case?

A. It was identical.

Cross-examination.

MR. KNIGHT:

Q. Your examination, Mr. Falkenau, was entirely a microscopical examination, was it not?

A. Yes, sir.

Q. No chemical examination?

A. No, sir.

Q. You made no analysis of the constituent elements of this material?

A. No, sir.

Q. Simply subjected it to the microscope?

A. Yes, sir.

Q. And to what degree of power was the microscope?

A. From one up to several thousands, but it was of three hundred diameters.

Q. Did you examine this substance in water?

A. Yes, sir.

Q. Did you moisten the glass?

A. Yes, sir.

Q. That is your method of examination?

A. Yes, sir.

Q. You found no difference whatever?

A. I found no difference whatever.

248 In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for a
Review of Decisions of U. S. General Appraisers Relative to Certain
Starch Imported in Cases Nos. 11961 to 11983, Both Inclusive.

Referee's Report.

UNITED STATES OF AMERICA,
Northern District of California, City and }
County of San Francisco.

I, F. N. Shurtleff, the referee appointed by the circuit court of the United States, ninth circuit, and northern district of California, to take such evidence as might be produced before me in the above-entitled matter, as well on behalf of the petitioner as the respondents therein, do hereby certify:

That the testimony and proceedings appearing in the foregoing transcript, consisting of 287 pages, were taken and had before me at room 64, in the Appraisers' building, northeast corner of Sansome and Washington streets, in said city and county of San Francisco, and at the times set forth in said transcript, to wit: the 14th, 19th, and 20th days of May, and the 10th and 16th days of June, 1896, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said days.

That Thomas Henry Brown, G. P. Lauinger, Edward A. Keil, M. F. Loewenstein, J. J. Schutz, A. L. Wisner, J. A. Sampson, Dr. Charles A. Kern, Thomas Price, Charles C. Leavitt, Henry Gray, Charles Williams, Pliny Bartlett, J. A. Doherty, Louis Saroni,
249 Hugo D. Keil, P. F. Ferguson, H. W. White, W. Frese, Frank H. Ames, Henry J. Hanks, and H. A. Karlfinke were called and examined on behalf of the petitioner in said above-entitled manner, and Eugene J. Bates, M. J. Brandenstein, J. E. Miles, Louis Falkenau, Everitt D. Jones, W. E. Cumback, William Ireland, W. Tappenbeck, and Robert Swain were called and examined on behalf of respondents therein; that previous to giving his testimony, each of said witnesses was by me duly sworn to tell the truth, the whole truth, and nothing but the truth, in said cause.

That said testimony was, under my direction, taken stenographically and put into typewriting by Clement Bennett, a skillful stenographer and a disinterested party, by and with the consent and approval of the parties to said above-entitled matter.

That upon the hearing of said matter, as aforesaid, Samuel Knight, Esq., assistant United States attorney, appeared as counsel for the petitioner, and Charles Page, Esq., appeared as counsel for the respondents.

That accompanying said depositions, and forming part thereof, are Exhibits A B C D E F G H I J K L M N O and P, introduced on the part of the petitioner, there being no exhibits introduced on the part of the respondents.

That said testimony, so taken, together with said exhibits, have

been retained by me until I now deliver them into the court for which they were taken. This comprises all the testimony offered by either side to date hereof.

In addition to the testimony taken before me, I also return herewith a stipulation duly entered into between the counsel for the parties respectively on the 13th day of February, 1896.

In witness whereof, I have hereunto set my hand at the
250 city and county of San Francisco, State and northern district
of California, this 18 day of July, in the year one thousand
eight hundred and ninety-six.

F. N. SHURTLEFF,
U. S. General Appraiser, Referee.

Be it further remembered, that on the 11th day of January, 1897, the said matters having been argued and submitted to the court for decision and judgment upon the law and facts herein, upon due consideration thereof, it was by the court found, established and decided in accordance with the findings of fact and conclusions of law and decision made and entered on the said 11th day of January, 1897, and judgment in accordance therewith was thereupon entered herein.

Now therefore, whereas the foregoing matters hereinbefore particularly set forth appear not of record, to the end that said matters and all thereof may be preserved and made of record, your petitioner, the above-named collector of customs, hereby respectfully presents to this honorable court the foregoing bill of exceptions, and upon the stipulation hereto attached of counsel for the respondents herein prays that the same may be settled and allowed as and for the bill of exceptions in the above numbered and mentioned case.

JOHN H. WISE,
Collector, etc., Petitioner and Appellant,
By SAMUEL KNIGHT,
Ass't U. S. Attorney.

It is hereby stipulated by and between the parties hereto, and their respective counsel, that the foregoing bill of exceptions contains a full, true, and correct report and statement of all the testimony and evidence introduced by either side in the above
251 mentioned and numbered case, and may be settled, allowed,
and approved as and for such bill of exceptions.

Dated February 23, 1897.

PAGE, McCUTCHEN & EELLS,
Attorneys for Importer.
SAMUEL KNIGHT,
Ass't U. S. Attorney, for Collector.

Order.

The foregoing bill of exceptions in the above case is hereby settled, allowed, and approved, and ordered filed *nunc pro tunc* as of January 11, 1897.

Dated February 24, 1897.

JOSEPH McKENNA,
Circuit Judge.

(Endorsed :) Bill of exceptions. Filed February 24th, 1897, as of January 11, 1897. W. J. Costigan, clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for a Review of Decisions of the Board of U. S. General Appraisers Relative to Certain Merchandise Imported, etc. "Starch Cases." No. 11961.

Petition for Appeal.

252 The above-named petitioner, collector of the port of San Francisco, California, appellant herein, conceiving himself aggrieved by the decision and judgment rendered and entered on the 11th day of January, 1897, in the above entitled and numbered case, doth hereby appeal from said decision and judgment to the U. S. circuit court of appeals for the ninth circuit, and upon the authority of the Attorney General of the United States who makes application therefor prays that this, his appeal, may be allowed and that a transcript of the record and proceedings and papers upon which said decision and judgment were made and rendered, duly authenticated, may be sent to said circuit court of appeals.

Dated January 30, 1897.

JOHN H. WISE,
Petitioner and Appellant,
By SAMUEL KNIGHT,
Ass't U. S. Attorney.

Order Allowing Appeal.

And now, to wit, on the 30th day of January, 1897, it is ordered that the said appeal be allowed as prayed for.

JOSEPH McKENNA,
Circuit Judge.

(Endorsed :) Rec'd this day a copy of the within, dated 30 January, 1897. Page & Eells, attorneys for respondents. Filed January 30th, 1897. W. J. Costigan, clerk.

253 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of JOHN H. WISE, Collector, for a Review of Decisions of the Board of U. S. General Appraisers Relative to Certain Merchandise Imported, etc. "Starch Cases," No. 11961.

Assignment of Errors.

And now, upon this 30th day of January, 1897, comes the above-named petitioner and appellant, by the United States attorney for said district, and says that in the record herein there is manifest error in this, to wit:

I.

That the said circuit court erred in finding and deciding—

(a.) That the term "tapioca" in the general importing markets of the United States includes tapioca flour.

(b.) That the merchandise involved herein is commercially known in such markets as "tapioca flour."

II.

That the said circuit court erred in not finding and deciding—

(a.) That the substance in controversy has been known to Congress and the trade from 1870 to the present time as, and actually is, a "root flour."

(b.) That the merchandise involved herein is not and has never been known to Congress or commercially as "tapioca."

254 (c.) That the article in question is and has been also commercially known and used entirely in this country since the time of its first importation as starch, or a preparation fit for use as starch, and is fit for use as such, and is and has been so used not only in laundry work, but in the various arts and manufactures mentioned in finding VII.

(d.) That the substance involved herein is not ordinarily adapted for culinary purposes, but the tapioca of commerce is entirely so adapted and used, and is commercially known as existing in two forms, pearl and flake.

III.

That the said circuit court erred in holding, adjudging, and deciding—

(a.) That the imported article herein involved is properly classified under the head of "tapioca."

(b.) That the decisions of the board of U. S. general appraisers herein admitting it free of duty under paragraph 730 of the tariff act of October 1, 1890, should be sustained.

(c.) That judgments should be entered in accordance therewith.

IV.

That the said circuit court erred in not holding, adjudging, and deciding—

(a.) That said merchandise is properly classified as "starch" or a preparation fit for use as starch.

(b.) That it is dutiable at two cents a pound under paragraph 323 of said tariff act.

(c.) That the decision of the board of U. S. general appraisers herein should be reversed.

255 (d.) That judgments for the said collector of the port, petitioner, and appellant herein, should be entered in accordance herewith.

JOHN H. WISE,
Petitioner and Appellant,
By SAMUEL KNIGHT,
As't U. S. Attorney.

(Endorsed :) Rec'd this day a copy of the within. Dated 30 January, 1897. Page & Eells, attorneys for respondents. Filed January 30th, 1897. W. J. Costigan, clerk.

At a stated term, to wit, the March term, A. D. 1897, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court room, in the city and county of San Francisco, on Thursday, the 25th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable William W. Morrow, district judge.

In re Application of JOHN H. WISE, Collector, etc., for a Review of the Decision of U. S. General Appraisers Relative to Certain Starch, etc. No. 11861.

Order Allowing Withdrawal of Exhibits.

On motion of Samuel Knight, Esq., assistant United States attorney, it is ordered that all the exhibits of material introduced in evidence herein and used on the hearing of this matter in this court be allowed to be withdrawn from the files of this cause, for
256 the purpose of being transmitted to the United States circuit court of appeals for the ninth circuit, as a part of the record upon appeal to said circuit court of appeals herein; the said exhibits of material to be delivered to the said circuit court of appeals, and to be returned to this court upon the determination of the appeal herein.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of the Petition of JOHN H. WISE, Collector, etc., for a Review of the Decision of the Board of General Appraisers, on Duty at the Port of New York, in the Matter of the Classification of Certain Flour Merchandise Imported by Chew Hing Lung & Co.

Certificate to Transcript.

I, W. J. Costigan, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing three hundred and ten pages, numbered from 1 to 310, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled matter (excepting therefrom all the exhibits of material introduced in evidence herein, which said original exhibits by order of court, accompany and form a part of this record), and that the same together constitute the transcript of the record herein, upon appeal to the United States circuit court of appeals for the ninth circuit.

257 I further certify that the cost of preparing and certifying the transcript of record on appeal in this matter amounts to \$157.80, and that said sum will be charged by me in my quarterly

account against the United States, for the quarter ending March 31, 1897.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, this 29th day of March, A. D. 1897.

[SEAL.]

W. J. COSTIGAN,
*Clerk United States Circuit Court, Northern
District of California.*

Citation.

THE UNITED STATES OF AMERICA, ss.:

The President of the United States of America to Chew Hing Lung & Co., importers of certain merchandise and respondents in the case hereinafter referred to, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the ninth circuit, to be holden at the city and in the county of San Francisco, in the State and northern district of California, in said circuit, on the 6th day of March, 1897, pursuant to an order allowing an appeal in such case, entered of record in the clerk's office of the United States circuit court, of said circuit and district, in that certain action numbered 11961, wherein John H. Wise, collector of customs for said port of San Francisco is appellant, and you are appellees, to show cause, if any there be, why the judgment and decision rendered against the said appellant as in said order allowing the appeal mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.

258 Witness the Honorable Joseph McKenna, judge of the United States circuit court, ninth circuit, northern district of California, this 4th day of February, 1897.

JOSEPH MCKENNA, *Judge.*

Due service hereof this day admitted.

Dated, February 5th, 1897.

PAGE, MCUTCHEN & EELLS.

Attorneys for Importers.

(Endorsed:) Filed July 5th, 1897. W. J. Costigan, clerk.

(Endorsed:) No. 362. In the United States circuit court of appeals for the ninth circuit. In the matter of the application of John H. Wise, collector, etc., petitioner and appellant, v. Chew Hing Lung & Co., respondent and appellee. Transcript of record upon appeal from the circuit court of the United States, ninth judicial circuit, in and for the northern district of California. Filed March 30, 1897. F. D. Monckton, clerk.

259 In the United States Circuit Court of Appeals for the Ninth Circuit.

JOHN H. WISE, Collector of the Port of San Francisco, Petitioner }
and Appellant, }
vs.

CHEW HING LUNG & COMPANY, Respondents and Appellees. }

Appeal from the circuit court of the United States, ninth circuit,
northern district of California.

Before Ross and Morrow, circuit judges, and Hawley, district judge.

Ross, circuit judge, delivered the opinion of the court :

The question in this case is whether certain merchandise imported into this country at the port of San Francisco is governed by the provisions of paragraph 323 or by those of section 2 of paragraph 730 of the tariff act of 1890.

Paragraph 323 reads: "Starch, including all preparations, from whatever substance produced, fit for use as starch, two cents per pound."

Section 2 of paragraph 730 is as follows: "Tapioca, cassava, or cassady, free."

The board of appraisers admitted the merchandise free, and its decision was, on appeal to the circuit court, affirmed. From
260 that decision the present appeal is brought by the collector.

It appears from the findings of the court below, which were largely based upon stipulation of the respective parties, that the importation in question consists of starch grains contained in and derived from the root botanically known as *jatropha manihot*; that in the West Indies this root is known as cassava or manioc; in Brazil, as mandioc; all of which names indicate the same thing, without any change of condition or character. The manihot, cassava, manioc, or mandioc, by whichever name called, is a shrub, of which there are at least two varieties. The root of the sweet cassava may be eaten with impunity; that of the bitter, which is most extensively cultivated, abounds in an acrid, milky juice, which renders it highly poisonous if eaten in the recent state. Both varieties contain a large proportion of starch. The starchy substance constituting the importations involved in the present controversy consists of the starch grains obtained from the manihot root by washing, scraping, and grating or disintegrating it into a pulp, which, in the bitter variety, is admitted to pressure so as to separate therefrom the deleterious juices. The starch grains settle, and the juice is subsequently decanted, leaving as a deposit a powder, which, after repeated washings with cold water and after being dried, is nearly pure starch and is insoluble in cold water. This is the substance constituting the importations under consideration. If sufficient heat and motion are afterwards applied to this substance, a mechanical
261 change takes place, the grains become fractured and thereby agglutinated. This latter substance is partly soluble in cold water, and is granulated tapioca, known in commerce as pearl

and flake tapioca. The importations in question were from China, made between November 2, 1893, and June 6, 1894, and were made chiefly for the purpose of supplying Chinese laundrymen, who use the article as starch, and to a slight extent also for food purposes. Its use for such purposes is, however, limited to the Chinese, except that in some instances, in San Francisco, this substance is used for starch purposes in their business by white laundrymen, by mixing it with wheat or corn starch. Wheat and corn and potato starches are the starches commonly used in the United States. The substance in question is not imported into San Francisco by others than Chinese. Among the white people dealing with the Chinese on the Pacific coast, the substance is commonly known as "Chinese starch." In the general markets of the United States it is commercially known as "tapioca flour." In those markets the term "tapioca" includes that article in three forms, viz: Flake tapioca, pearl tapioca, and tapioca flour. The same substance is imported from China and used in the Eastern States for starch purposes by calico printers and carpet manufacturers to thicken colors; for bookbinding, in the manufacture of paper, filling in painting, manufacture of a substance for gum arabic and other gums, and also as an adulterant in the manufacture of candy and other articles.

The court below further found that "the article in question
262 is fit for use as starch in laundry work in the sense that by its use clothes can be starched, but it is not commonly used in such work as starch throughout the United States, and is not known to be so used except on the Pacific coast, as hereinbefore stated."

A precisely similar article was under consideration by the circuit court of appeals for the second circuit in 1893 (*In re Townsend et al.*, 55 Fed., 222; 5 C. C. A., 489). The evidence presented to the court in that case failed to show that the article in question was a preparation fit for use as starch. The court concluded its opinion in these words: "If tapioca flour was, in our opinion, a preparation fit for use as starch, the question would have arisen whether it was specially provided for under paragraph 323; but the conclusion being that it was not such a preparation, it has a place only in the free list." The testimony there was such that the court said: "The article has never been sold as a starch, and is not considered in this country as adapted to the ordinary purposes of that article, and has never been manufactured into commercial starch, but it is chemically a starch. The term 'preparations fit for use as starch' means preparations which are actually, and not theoretically, fit for such use, which can be practically used as such, and not which can be made by manufacturers fit for such use. Tapioca flour is used for purposes which are analogous to those for which starch is used. It is not used, though it probably could, by adequate preparation, be used for the same purposes, unless its use as a sizing can be called the same purpose. The testimony of the witness
263 upon that subject was not sufficient to justify the stress which the board of general appraisers placed upon it. The very suggestive evidence of the unsuitableness of tapioca for com-

mercial use as starch is that, although it is much cheaper than starch made in this country, it does not come into commercial competition with starch made here." (56 Fed. Rep., 224.)

In the case at bar the evidence is, and the court so found, that with the imposition of a duty of two cents a pound the cost of the article in question has been substantially as great as that of ordinary starches—a little more than that of the cheapest and a little less than that of the best starches.

A comparison of the facts as made to appear in the Townsend case with those established in the case at bar very clearly shows that they are almost entirely dissimilar, except in respect to the fact that the article in question is chemically almost a pure starch. In the present case it is shown that it is not only chemically almost a pure starch, but that it is commercially known on the Pacific coast as "Chinese starch," and is largely used by the Chinese for the starching and stiffening of clothes and to some extent by white people in their laundry work. It is further shown in the present case that the same article is imported from China and used in the Eastern States for starch purposes by calico printers and carpet manufacturers to thicken colors, in the manufacture of paper, for book-binding, filling in painting, manufacture of a substitute for gum arabic and other gums, and also as an adulterant in the manufacture of

264 candy and other articles. The evidence and findings in the present case not only show that the article in question is a preparation fit for use as starch, but that its chief use in the United States is as a starch, and that only to a very limited extent is it used for food purposes.

The case here presented for decision is therefore very different from that before the circuit court of appeals for the second circuit, entitled *In re Townsend et al.* The court here must decide, as the court there did, upon the facts before it. This is by no means saying that the tariff law means one thing in San Francisco and another in New York. Tariff laws are laws of general application, and are made not for the government of particular ports, but for the government of the whole country, including all of its ports. But courts do not make facts; they find them, when called upon to do so, upon legal evidence properly introduced, and upon the facts as thus established their judgment must be based.

Tapioca flour being here shown to be a preparation fit for use as starch, the question arises, which the circuit court of appeals for the second circuit said did not arise in the Townsend case, whether it was specially provided for under paragraph 323 of the act of 1890. It will be well to insert again the two clauses of the act in question.

Paragraph 323: "Starch, including all preparations, from whatever substance produced, fit for use as starch, two cents per pound."

Section 2 of paragraph 730: "Tapioca, cassava, or cassady, free."

265 That the article under consideration is prepared from the root of the mandioc plant, and is its first product, is conceded. Being a flour, it is a root flour. The application of a decree of heat and of motion to the flour will convert it into the flake and pearl

tapioca respectively of commerce. These are well known food products and clearly entitled to free entry under section 2 of paragraph 730 of the act of 1890. Does the fact shown by the findings and evidence that in the general trade of the United States the term "tapioca" is understood to include the flour, as well as flake and pearl tapioca, entitle the flour to free entry also? That is undoubtedly so, unless Congress in the act in question has made a specific provision covering the flour, for the rule is well settled that in tariff legislation the designation of an article *eo nomine* must prevail over a general description that would otherwise embrace it (*Homer vs. Collector*, 1 Wall., 486; *Reiche vs. Smythe*, 13 Wall., 162; *Movius vs. Arthur*, 95 U. S., 144; *Arthur vs. Lahey*, 96 U. S., 112; *Arthur vs. Rheims*, *id.*, 143); but a name under which an article is commercially known will not control a specific provision respecting it (*Magone vs. Heller*, 150 U. S., 70). In that case certain provisions of the tariff act of 1883 were involved. "Schedule A, chemical products," of that act imposed duties on various compounds of "potash," including "nitrate of or saltpetre, crude, one cent per pound; nitrate of or refined saltpetre, one and one-half cents per pound; sulphate of, twenty per centum ad valorem;" "bichromate of potash, three cents per pound" (22 Stats., 493).

266 Among the articles exempt from duty by the free list of the same act were the following: "Bone dust and bone ash for manufacture of phosphate and fertilizers; carbon, animal, fit for fertilizing only; guano, manures, and all substances expressly used for manures" (22 Stats., 515).

The court said: "Congress, for the promotion of agriculture, evidently intended that if a substance which might be described by the name of an article subject to duty under Schedule A was, within the description in the free list, of use for fertilizing the ground, it should be exempt from duty;" and accordingly, whether the article which was there the subject of importation and which was chemically "sulphate of potash" was entitled to free entry or not was made to depend upon whether it was "expressly used for manure" in the sense defined by the court.

As has been seen, Congress by the act here under consideration put tapioca, cassava, or cassady on the free list, but in the same act it also provided that starch, including all preparations, from whatever substance produced, fit for use as starch, should pay a duty of two cents per pound.

Under the tariff act of July 30, 1846, starch and tapioca were made dutiable at twenty per cent. ad valorem (9 Stats. at Large, 47). The act of March 2, 1861, continued the duty on starch at twenty per cent. ad valorem, but lowered the duty on tapioca to ten per cent. ad valorem (12 Stats. at Large, 188, 190). By the act of June 30, 1864, it was provided that starch made of potatoes should pay 2 mills a pound duty, starch made of corn or wheat 3 mills a pound, and starch made of rice or any other material 1 cent

267 a pound, the duty on tapioca remaining ten per cent. ad valorem (13 Stats. at Large, 266). In the Revised Statutes root flour, tapioca, cassava, or cassady are upon the free list, and a

duty imposed on "starch made of potatoes or corn one cent per pound and twenty per cent. ad valorem; made of rice or any other material, three cents per pound and twenty per cent. ad valorem" (Revised Stats., pages 481, 488, 489). By the act of March 3, 1883, the duty on potato or corn starch was placed at two cents a pound and on other starch at two and one-half cents a pound, and by the same act root flour, tapioca, cassava, or cassady, and arrowroot were placed on the free list (22 Stats. at Large, 503, 517, 520, 521).

The law so stood at the time of the passage of the act of 1890, in which act are the provisions already twice quoted and which act omitted from the free list root flour, but inserted therein "arrowroot, raw or manufactured."

While root flour, tapioca, cassava, or cassady remained upon the free list, with a duty imposed on the various starches at so much a pound, it was held in a number of cases by the Treasury Department that flour made from the mandioc root was not embraced by the provisions in respect to starch, but was entitled to free entry. Some of those decisions proceeded upon the ground that the flour was one form of tapioca, and therefore embraced by that term, and some of them upon the ground that the flour, being made from the mandioc root, was a root flour and entitled to free entry as such (Decisions of Treasury Department, ss. 3161, 5802, 7971, 9031).

And in *Chung Yune vs. Kelly*, 14 Fed. Rep., 639, Judge 268 Dady held that flour made from the manihot root, whether known as root flour, cassava, or tapioca, having been expressly exempted from duty by the then existing statute, was not included in the provisions imposing a duty on starches, although largely composed of starch granules and fit for use as starch.

The fitness of this root flour included within the term "tapioca," as understood by the general trade of the United States, for use as starch in laundry work, as well as in the arts and manufactures, is clearly shown by the evidence and the findings of the court below. Indeed, it is shown that in this country, at least, it is chiefly so used. In view of the former legislation, to which reference has been made, and of the decisions that were based upon it, it does not admit of doubt, we think, that when Congress by the act of 1890 dropped root flour from the free list and imposed a duty, not only on starches, as theretofore, but also on "all preparations, from whatever substance produced, fit for use as starch," it intended to add to the protection of American starches and to make all root flour fit for use as starch, from whatever root produced and under whatever generic name known, pay a duty at the prescribed rate. There is nothing to the contrary in the case entitled *In re Townsend and others*, 5 C. C. A., 489. The Government's case was there, of course, ended by the failure to make it appear that the article in question was fit for use as starch.

The learned counsel for the respondents in the present case, in a supplemental brief, refer to the action of the last Congress 269 in respect to the tariff act just enacted, known as the Dingley bill, as sustaining their construction of the act of 1890. It is said that the Dingley bill, as introduced in the House of Repre-

sentatives, provided for a duty of one-half of one per cent. per pound on "tapioca, cassava or cassada, farina, and sago, in flake, pearl, or flour," and that, as enacted, the article "tapioca" was transferred to the free list and no mention made of flour, flake, or pearl tapioca, while in the same bill as introduced and as enacted provision was made for a duty on starch and "preparations" fit for use as starch.

To what extent, if at all, the latter act was influenced by the decision in the Townsend case and by the various rulings made by the Treasury Department under the provisions of the act of 1890, known as the McKinley bill, and the subsequent tariff act, known as the Wilson bill, may be proper subjects for consideration when an interpretation of the provisions of the Dingley bill is demanded. The question does not arise in the present case, the decision of which involves only the true meaning of the act of 1890. What Congress meant by that act is not aided by its act in 1897.

Judgment reversed and cause remanded, with directions to the court below to enter judgment upon the findings in accordance with the prayer of the petition.

(Endorsed :) Opinion. Filed Oct. 4, 1897. F. D. Monckton, clerk.

270 United States Circuit Court of Appeals for the Ninth Circuit,
October Term, 189-.

JOHN H. WISE, Collector of Customs, etc., Petitioner and Appellant,	} No. 362. (The Starch Case.)
vs.	
CHEW HING LUNG & COMPANY, Ap- pellee.	

Appeal from the circuit court of the United States for the northern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of California and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed and the cause is remanded to said circuit court, with directions to enter judgment upon the findings in accordance with the prayer of the petition.

(Endorsed :) Decree. Filed Oct. 4, 1897. F. D. Monckton, clerk.

271 United States Circuit Court of Appeals for the Ninth Circuit.

JOHN H. WISE, Collector of Customs, etc., Petitioner and
Appellant,

v.

CHEW HING LUNG & COMPANY, Appellee.

} No. 362.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing two hundred and seventy (270) pages, numbered from one (1) to two hundred and seventy (270), both inclusive, to be a copy of the entire record in the above-entitled case in the said United States circuit court of appeals, as the originals thereof remain and appear of record in my office.

Seal United States Circuit Court of Appeals, Ninth Circuit. Attest my hand and the seal of said United States circuit court of appeals, at San Francisco, California, this 2nd day of November, A. D. 1897.

F. D. MONCKTON, *Clerk.*

272 UNITED STATES OF AMERICA, ss.:

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which John H. Wise, collector of customs for the port of San Francisco, is appellant and Chew Hing Lung & Company are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of California, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and

273 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22d day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

274 [Endorsed:] (Dock.) Supreme Court of the United States.

No. 524, October term, 1897. Chew Hing Lung & Company vs. John H. Wise, collector, &c. U. S. circuit court of appeals for the ninth circuit. John H. Wise, collector, etc., appellant, v. Chew Hing Lung & Company. No. 362. Writ of certiorari. Filed Jan. 4, 1898. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit, by Meredith Sawyer, deputy clerk.

275 In the Supreme Court of the United States, October Term,
1897.

CHEW HING LUNG & COMPANY }
v. } No. 524.
JOHN H. WISE, Collector, &c. }

Stipulation.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified transcript of the record in the circuit court of appeals for the ninth circuit, now on file in the Supreme Court of the United States, may be taken as the return of the clerk to the writ of certiorari issued herein.

CHARLES PAGE,
Counsel for Petitioners.
J. K. RICHARDS,
Solicitor General.

(Endorsed :) No. 362. U. S. circuit court of appeals for the ninth circuit. John H. Wise, collector, etc., appellant, v. Chew Hing Lung & Co. Stipulation as to return to writ of certiorari issued by Supreme Court of the United States. Filed Jan. 4, 1898. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit, by Meredith Sawyer, deputy clerk.

276 United States Circuit Court of Appeals for the Ninth Circuit.

JOHN H. WISE, Collector, etc., Appellant, }
v. } No. 362.
CHEW HING LUNG & COMPANY, Appellee. }

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing stipulation to be a full, true, and correct copy of a stipulation filed in the above-entitled cause in connection with the return to the writ of certiorari issued by the Supreme Court of the United States herein, as the original thereof remains of record in my office.

Seal United States Circuit Court of Appeals, Ninth Circuit. Attest my hand and the seal of said United States circuit court of appeals, at San Francisco, California, this 5th day of January, A. D. 1898.

F. D. MONCKTON, *Clerk,*
By MEREDITH SAWYER,
Deputy Clerk.

277 United States Circuit Court of Appeals for the Ninth Circuit.

JOHN H. WISE, Collector, etc., Appellant, }
v. } No. 362.
CHEW HING LUNG & COMPANY, Appellee. }

Return to Writ of Certiorari.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, in obedience to the foregoing writ of certiorari issued out of the Supreme Court of the United States and addressed to the honorable judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedings in the above-entitled cause, do hereby attach to the said writ a certified copy of a stipulation entered into between the attorneys of record for the several parties in the cause, the original of which stipulation has been heretofore filed in this court, and do make the same my return to said writ.

Seal United States Circuit Court of Appeals, Ninth Circuit. In testimony whereof I have hereunto set my hand and affixed the seal of said United States circuit court of appeals, at San Francisco, California, this 5th day of January, A. D. 1898.

F. D. MONCKTON, *Clerk*,
By MEREDITH SAWYER,
Deputy Clerk.

Return agreed to as to form.

CHAS. PAGE,
Counsel for Petitioners.

278 [Endorsed:] Case No. 16,737. Supreme Court U. S., October term, 1898. Term No., 202. Chew Hing Lung & Company, petitioners, vs. John H. Wise, collector, &c. Writ of certiorari and return. Office Supreme Court U. S. Filed Jan. 13, 1898. James H. McKenney, clerk.

Endorsed on cover: Case No. 16,737. U. S. C. C. of appeals, 9th circuit. Term No., 202. Chew Hing Lung & Company, petitioners, vs. John H. Wise, collector of customs for the port of San Francisco. Filed December 3, 1897.

FILE
DEC 3
JAMES H. McKE

No. 534 36 202.

IN THE
SUPREME COURT OF THE UNITED STATES.

In the Matter of the Application of
JOHN H. WISE, Collector, Etc.,

Petitioner and Appellant,

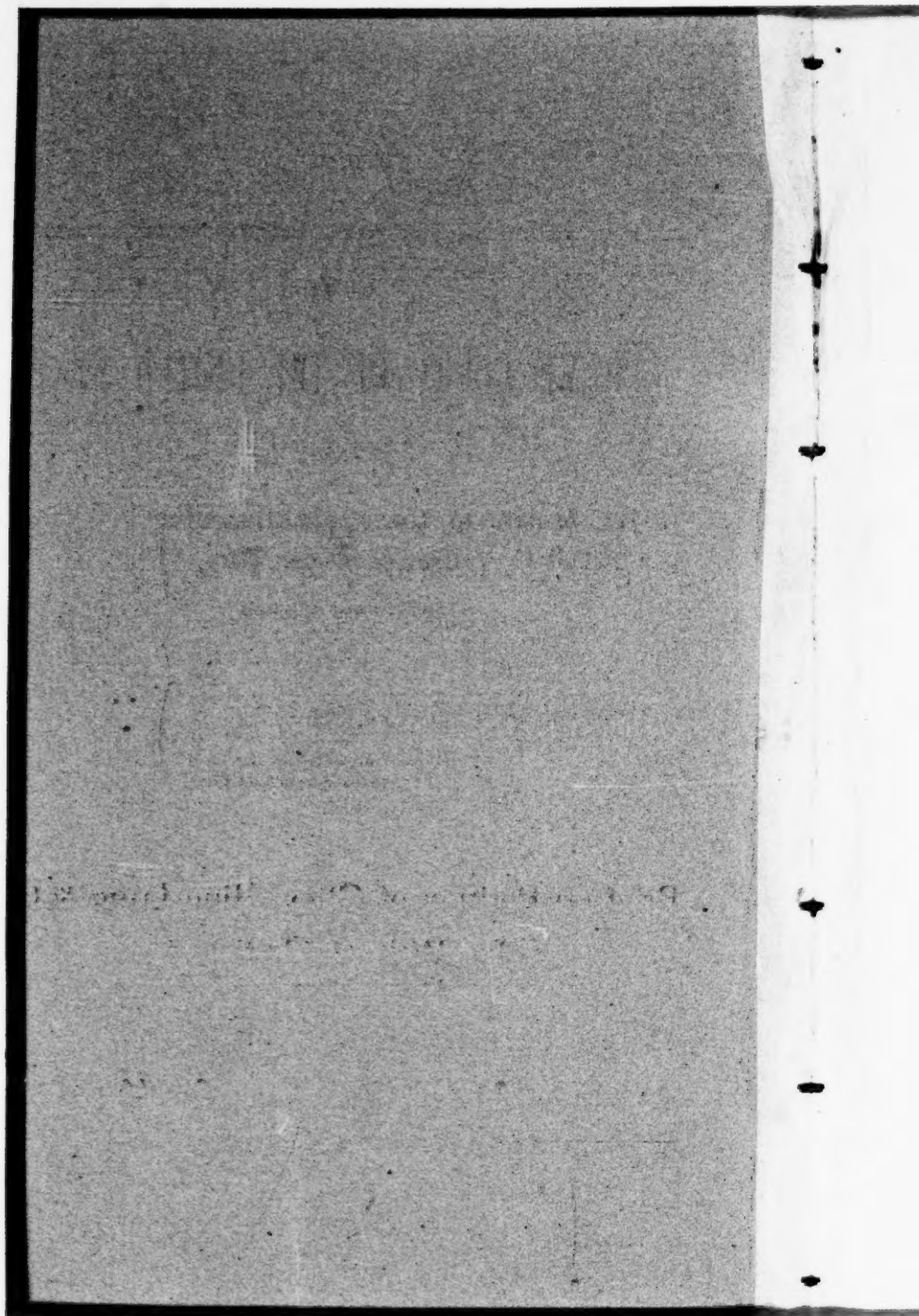
vs.

CHEW HING LUNG & CO.,

Respondent and Appellee, and
Petitioner in this Court.

Petition of Chew Hing Lung & Co. for a Writ of Certiorari
to review the Judgment of the Circuit Court of Appeals
for the Ninth Circuit in the above-entitled matter.

CHARLES PAGE,
Counsel for Petitioner.



IN THE
Supreme Court of the United States.

IN THE MATTER OF THE APPLICATION OF

JOHN H. WISE, COLLECTOR, ETC.,

Respondent herein,

vs.

CHEW HING LUNG & CO.,

Petitioners herein.

**Petition of Chew Hing Lung & Co. for a Writ
of Certiorari to Review the Judgment of the
Circuit Court of Appeals for the Ninth Cir-
cuit in the above-entitled Matter.**

To the Honorable the Supreme Court of the United States :

The petition of Chew Hing Lung & Co. respectfully
shows to the Court:

That on the 29th of October, 1894, John H. Wise,
Collector of Customs of the Port of San Francisco, ap-
plied to the Circuit Court of the United States for the
Ninth Circuit to review the questions of law and fact
involved in the decision of the United States General
Appraisers on duty at the port of New York, made and
rendered by them on the 15th of October, 1894, in
which that body held certain imported merchandise to
be "*tapioca flour*" and entitled to free entry as "*tap-*

ioca," under paragraph 730 of the McKinley Act of 1890, overruling the classification theretofore made by the appraisers at San Francisco and himself of the article as *starch*, dutiable at two cents per pound.

That the Circuit Court thereafter on the 11th of July, 1897, made its findings and judgment in the said matter affirming the decision of the U. S. General Appraisers.

That an appeal was thereupon taken by the Collector to the Circuit Court of Appeals for the Ninth Circuit, which, on the 4th of October, 1897, reversed the judgment of the Circuit Court and ordered judgment on the findings in favor of the Collector.

The findings of fact were substantially as follows:

1. The imported article consisted of the starch grains contained in and derived, by washing and scraping, from the root botanically known as *jatropha manihot*. In the West Indies, the shrub is known as cassava or manioc; in Brazil, as mandioc. This root contains a large proportion of starch.

2. In the general importing markets of the United States, the article is commercially known as tapioca flour. In these markets, the term "tapioca" includes that article in three forms, viz.: flake tapioca, pearl tapioca, and tapioca flour.

Among the white people dealing with the Chinese on the Pacific Coast, the article is commonly known as "Chinese starch." The importation was made by Chinamen for the purpose of supplying Chinese laundrymen who use it as starch, and to a slight extent,

for food purposes. Its use for these purposes is limited to the Chinese, except that in some cases white laundrymen in San Francisco use it for mixing with wheat or corn starch. The article is fit for use as starch in laundry work, in the sense that by its use clothes can be starched, but it is not commonly used in such work as starch throughout the United States, and is not known to be so used except on the Pacific Coast to the extent already stated.

In the Eastern States, the article is imported and used for starch purposes by calico printers and carpet manufacturers to thicken colors, for bookbinding, in the manufacture of paper, gum arabic, confectionery, etc.

Upon these facts, the importer contended that the article was tapioca, commercially so known, and that it was entitled to free entry under paragraph 730, which places on the free list:

“ Tapioca, cassava or cassady.”

The collector contended that the article was dutiable at two cents per pounds under paragraph 323:

“ Starch, including all preparations, from whatever substance produced, fit for use as starch.”

The Court of Appeals reversed the judgment of the Circuit Court and decided that the article, though commercially tapioca and mentioned, *eo nomine*, as free, was intended, nevertheless, to be dutiable under the starch clause. The authority for this ruling was found by the Court in the case of *Magone vs. Heller*, 150, U. S., 70.

The petitioner believes that the decision of the Court

of Appeals was erroneous and should be reviewed by this Court. The cause is an exceedingly important one in several respects.

a. It involves the right of importers on the Pacific Coast to a return of a large amount of duties exacted from them, while Eastern importers of the same article, during the same time, were allowed to import the same article free, under the decision hereinafter referred to.

b. The Circuit Court of Appeals of the Second Circuit has held that the article is not fit for use as starch, within the meaning of the act, and is free, though it may be and is used for purposes analogous to those for which starch is used. (*In re Townsend*, 56 F. R., 222.) That Court, under the circumstances, found no occasion to determine the effect of its specific designation as free upon the starch clauses.

c. The article has been admitted to free entry, under treasury decisions, for more than twenty years as tapioca, under a precisely similar wording in the free list.

d. If tapioca flour (the starch grains precipitated by mere scraping and washing the root of the shrub, without other preparation than drying) is to be deemed starch, or a preparation fit for use as starch, simply because it may be in some degree applied to starch purposes, arrowroot and sago, both nearly pure starches, which are also on the free list, must likewise be held to be dutiable. This cannot have been the intention of Congress.

e. The Dingley Bill has re-enacted the McKinley Bill in the two clauses under consideration. Conse-

quently, if the decision of the Court of Appeals be erroneous, the illegal exaction will continue for years, unless now corrected. The article will be free in the Eastern ports, under the ruling of the Circuit Court of Appeals of the Second Circuit, while charged with a heavy duty on the Pacific Coast, under the decision now sought to be reviewed.

The petitioner contends, as a matter of law, that the general language of the starch clause, if broad enough to embrace an otherwise non-enumerated article, must nevertheless be subordinate to the specific designation of the article in the free list, in the absence of manifest evidence from the act itself, that the mere adaptability of the article, by reason of its chemical character, to a certain use, should give it another classification. The petitioner further contends that no such evidence exists in the act of 1890.

He further contends that as starch, known to commerce and the law, is a manufactured article intended primarily for the laundry, the "preparation fit for use as starch" made dutiable in that clause must have been intended to be a manufactured article designed and chiefly used as a substitute for commercial starch in laundry uses.

He further contends that, as the uses of tapioca flour as food and in the manufactures of the country had been known to Congress for more than twenty years, for which uses it had been granted free entry, the reenactment in the act of 1890 of the free list in the same words used in prior acts, must be deemed to show an

intention by Congress that tapioca flour should continue to enter free for the same uses.

He further contends that the Court of Appeals erred in holding that the use of tapioca flour by a few Chinese laundrymen was such a use as would justify its classification by use within the meaning of the act, as a preparation fit for use as starch, and he further contends that the use of the article in the manufactures is not a use "as starch" within the meaning of the law.

Your petitioner herewith presents to this Court and files a duly certified copy of the entire record of the lower Court in the case as the same appears in the said Circuit Court of Appeals, including the opinion, together with a brief, which discusses the question at issue, and copies of the decisions of the Treasury Department, the latter having by agreement been submitted as printed in the reports of the Department.

Your petitioner prays that the writ of *certiorari* be issued out of and under the seal of this Court directed to the Circuit Court of Appeals of the United States for the Ninth Circuit, commanding the said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and of all the proceedings of the said Circuit Court of Appeals "In the matter of the application of John H. Wise, Collector, &c. *vs.* Chew Hing Lung & Co.," to the end that this said case may be reviewed and determined by this Court as provided by section 6 of the Act of Congress entitled, "An Act to establish Circuit Courts of Appeal" and to define and regulate in certain cases the juris-

"diction of the Courts of the United States, and for
"other purposes, approved March 3, 1891."

And your petitioner further prays that the said judgment of said Circuit Court of Appeals be reversed and the cause remanded with instructions to enter a judgment in favor of your petitioner and against John H. Wise, Collector, &c., upon the findings of a fact heretofore made in the case and the evidence therein.

And your petitioner will ever pray, &c.

CHEW HING LUNG & CO.,

Petitioner.

CHARLES PAGE,

Mills Building, San Francisco, Cal.,

Counsel for Petitioner.

UNITED STATES OF AMERICA, }
Northern District of California, } ss.

Charles Page, being duly sworn, deposes and says: I am counsel for the petitioners above named, and as such have had personal charge of the case in the Circuit Court of the United States for the Northern District of California, and in the Circuit Court of Appeals for the Ninth Circuit. I know the contents of the foregoing petition. The facts therein stated are true to the best of my knowledge, information, and belief.

CHARLES PAGE.

Subscribed and sworn to before me this 22nd day of November, 1897.

F. D. MONCKTON,

Clerk U. S. Circuit Court of Appeals, Ninth Circuit.

seal.

Certificate of Counsel.

I hereby certify that I have carefully examined the foregoing petition and application for a writ of *certiorari*, and that in my opinion the same is well founded, and the case is one in which the prayer of the petitioner should be granted by this Court.

CHARLES PAGE,

Counsel for Petitioner

To H. S. Foote, Esq., United States Attorney; Samuel Knight, Esq., Asst. U. S. Attorney:

Please take notice that on the ~~18th~~ day of December, 1897, on the opening of Court, or as soon thereafter as the matter can be heard, I shall move the Supreme Court of the United States at the court room thereof in the City of Washington, D. C., that the foregoing petition for a writ of *certiorari* be granted.

Dated at San Francisco, this ~~22nd~~ day of November, 1897.

CHARLES PAGE,

Counsel for Petitioner.

Service of above and receipt of copy thereof, together with copy of the petition, is hereby admitted at San Francisco, California, this ~~22nd~~ day of November, 1897.

H. S. FOOTE,

U. S. Attorney,

SAMUEL KNIGHT,

Asst. U. S. Attorney,

Counsel for John H. Wise, Collector.

Original
N. 524. Dec 36
DEC 3 1894
JAMES H. McKENNA
Brief of Page for Petitioner.
No. 524

Filed Dec 3, 1894.

SUPREME COURT OF THE UNITED STATES.

In the Matter of the Application of
JOHN H. WISE, Collector, Etc.,

Petitioner and Appellant,

vs.

CHEW HING LUNG & CO.,

Respondent and Appellee, and
Petitioner in this Court.

Brief on Petition of Chew Hing Lung & Co.
for Writ of Certiorari.

CHARLES PAGE,
Counsel for Petitioner.

IN THE
Supreme Court of the United States.

IN THE MATTER OF THE APPLICATION OF

JOHN H. WISE, COLLECTOR, ETC.,

Appellant,

vs.

CHEW HING LUNG & CO.,

Appellee.

**Brief on Petition of Chew Hing Lung & Co. for
Writ of Certiorari.**

The question involved in this cause is whether certain "tapioca flour" was entitled at the time of importation to entry free of duty, under the McKinley bill, or was dutiable, under the same Act, at the rate of two cents per pound.

The finding of the Circuit Court (find. V, p. 18, opinion, p. 22), which is accepted by the Court of Appeals, and is amply supported by the evidence, by the decision of the Board of General Appraisers, and the rulings of the Treasury Department during the last twenty years, is, that "in the general importing markets of the United States," the article has been and is "commercially known as 'tapioca flour.' In those markets 'the term 'tapioca' includes that article in three forms, viz.: flake tapioca, pearl tapioca, and tapioca flour." (Find. V, p. 18.)

The importers claimed that the article was described *eo nomine* in the free list, and was duty free. The Act of 1890 provides:

“Sec. 2. * * * Unless otherwise specially provided for in this Act, the following articles, when imported, shall be exempt from duty:

“488. Arrowroot, raw or unmanufactured.

“695. Sago, crude, and sago flour.

“730. Tapioca, cassava or cassady.”

The Court further found, however, that the imported article, which “consists of the starch grains obtained from the manihot root by washing, scraping, and grating, or disintegrating it into a pulp,” and drying, “is nearly pure starch” (find. III, p. 17), and that it is “fit for use as starch in laundry work, *in the sense that by its use clothes can be starched, but it is not commonly used in such work as starch throughout the United States*; and is not known to be so used except on the Pacific Coast” (find. VIII, p. 19), where Chinese laundrymen use it for such purpose, and, to a slight extent, as food. White laundrymen, in some instances, in San Francisco, use it to mix with wheat or corn starch (find. IV, p. 18). White people there, in dealing with Chinamen, call the article “Chinese starch.”

In the Eastern States the article was used “for starch purposes by calico printers and carpet manufacturers to thicken colors, for bookbinding, in the manufacture of paper, filling in painting, manufacture of a substitute for gum arabic and other gums, also as an adulterant in the manufacture of candy in some cases, and other articles” (find. VII, p. 19).

Upon these facts, the Collector insisted that the article was properly dutiable under paragraph 323:

“ Starch, including all preparations, from whatever substance produced, fit for use as starch, two cents per pound.”

The Circuit Court held that the article had been properly decided to be free by the Board of General Appraisers, and affirmed their action.

Upon appeal, the Court of Appeals, *upon the findings*, reversed the Circuit Court, holding that the designation of the article *eo nomine* as free must give way to what it decided to be *a more specific provision* regarding it, viz.: that, as “ a preparation fit for use as starch,” Congress intended it should pay a duty. The findings of the Circuit Court were held to sufficiently establish such fitness for use as starch.

The petitioner submits that the classification ordered by the Court of Appeals was erroneous, because:

I.

The article was designated by its commercial name as free. Such specific designation must control a general description, whether of quality or use, in the absence of evidence, in the act, which shows a special intent by Congress that in a given case or condition, the article shall be classified otherwise than as free.

“ The commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of tariff laws.”

Robertson vs. Solomon, 130 U. S., 412.

Sonn vs. Magone, 159 U. S., 422.

Cadwalader vs. Zeh, 151 U. S., 171.

Dejonge vs. Magone, 159 U. S., 562.

“ When Congress has designated an article by its specific name, and imposed a duty upon it by such name, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it.”

Arthur vs. Lahey, 96 U. S., 118.

The word “ handkerchiefs ” was held to be denominative of the article imported and to control the descriptive words “ linen embroideries,” although the handkerchiefs were of linen and embroidered. The “ test of embroidery,” otherwise applicable, must give way to the specific designation.

Robertson vs. Glendeaning, 132 U. S., 158.

Barber vs. Schell, 107 U. S., 617.

Oil, obtained by distillation, which was a form of paraffine, though not the article known as “ paraffine oil,” was held to be free as “ paraffine ” and not dutiable as a product or preparation known as “ distilled oil.”

* * * “ The use by Congress of the single word “ paraffine,” without any qualification, manifests an intention to cover, at least, all varieties of the article which were known when the act was passed.”

Shoellkopf vs. U. S., 71 Fed., 694 (C. C. A.).

“ Acids ” being free and “ preparations of coal tar ” dutiable, the Court of Appeals said: “ As one (clause)

"imposes duty and the other exempts from duty, it is
 "obvious that Congress did not intend both provisions
 "to apply to the same article." The article being an
 acid, it was held to be designated *eo nomine* and, there-
 fore, free.

Matheson vs. U. S., 71 Fed. R., 394.

"Tapioca" was on the free list when the Act of 1890 was passed, as it had been for twenty years. "Tapioca flour" has always been an acknowledged form of tapioca; it is that article in its crudest form. The commercial designation as such was unquestioned by the Circuit and Appellate Courts. The Treasury Department, as shown by repeated rulings printed in an appendix to this brief, has always recognized its name and character and enforced its right to free entry.

See 16 Stat., 268, Rev. Statutes, Sec. 2505.

Act of 1883, 22 Stat., 521.

Under such circumstances, the rulings of the Department carry much weight in the courts.

Robertson vs. Downing, 127 U. S., 613.

U. S. vs. Hill, 120 U. S., 169, 182.

U. S. vs. Wotten, 50 Fed. R., 693, *affirmed in* 53
 53 F. R., 344.

Swayne vs. Hager, 13 Saw., 621.

The Court of Appeals, in the case now at bar, decided that the general language of the Starch Clause, assessing duty on "starch or any preparation fit for use as starch" was, by reason of the *use* therein mentioned, a

more specific provision than the designation by commercial name. *Magone vs. Heller*, 150 U. S., 70, was found to be authority for this position. In this, we submit, that the Court was clearly wrong. We cannot see how an interpretation can be placed on that case which is so far at variance with understood rules. Under the ruling adopted, sago and arrowroot, both chemically pure starches and both on the free list, would also be dutiable. Tapioca flour is sometimes called Brazilian arrowroot (U. S. Dispensatory, p. 1754). It needs only the application of heat to make it pearl and flake tapioca, both well known food substances (find. III, p. 17.)

In *Solomon vs. Arthur*, 102 U. S., 208, it had been held that the words "manufactures of mixed materials, in part of cotton," etc., were not a "name for goods." * * * "We think, said the Court, "it is very clear they are merely descriptive." * * * "It is sometimes the case, no doubt, that certain articles are so obviously intended to be included in a particular grouping or classification, as to *repel* any suggestion that they are meant to be embraced in a different part of the law, though literally applicable to them. But this can not be said in the case now before us. *The goods in question have no such inseparable relation to one form of description exclusive of the other*; nor are they so clearly intended to be embraced in any particular grouping or classification, as to repel or prevent the application to them of the clause under which they were assessed."

If there can be no question of the fact that tapioca

flour commercially falls under the name of tapioca, we submit that it would be difficult, indeed, to find in the general words, "any preparation fit for use as starch," such an expression of the "obvious" intention of Congress as would "repel or prevent the application" to it of the rate of duty by designation *eo nomine*. If we consider, further, the fact that tapioca, sago, and arrow-root are all chemically pure starch, that they are all food substances, used in the sick room; that any of these articles may, to some extent, and by reason only of its starchy qualities, be used for laundry purposes, and that none of them can have any use except as starch in some way, and that this quality has been that which for years has made it desirable that the substances should be free, all of which facts "Congress must be presumed to have known," (*Dejonge vs. Magone*, 159 U. S., 567) we shall find ourselves driven, in support of the judgment of the Court of Appeals, to say that the free list, as to these articles, was intended by it *to have no operation whatever*, and that words used in all the tariff acts since 1870 ceased to have their well understood meaning when they were again used in the Act of 1890.

Magone vs. Heller, 150 U. S., 70, we submit, was not correctly read by the Court of Appeals. In that case this Court held that the intention of Congress to make free any chemical product (though by name dutiable), if it should be "expressly used for manure," was "*manifest*" from the fact that, in the clause declaring such manure substances free, articles otherwise dutiable

as chemical products, were mentioned by name as free, if of use for fertilizing the ground, within the meaning of the free list. This decision was within the rule of *Solomon vs. Arthur (sup.)*, which conceded the possibility of an exception to the rule of specific designation in cases where "certain articles are so obviously intended "to be included in a particular grouping or classification as to *repel any suggestion* that they are meant to "be embraced in a different part of the law, though "literally applicable to them."

But the starch clause contains no words manifestly, or in any way indicating that its terms shall include articles named in the free list, nor is there anything in *Magone vs. Heller* which justifies the assumption that, because an article on the free list may be used, by reason of its chemical qualities in place of starch, to some extent, it shall, therefore, be taken from that list and made dutiable as starch. The reasoning of this Court excludes the thought that if the words there under construction had been merely "manures and all substances fit for manure," it would have held that chemical products, dutiable *eo nomine*, were intended to be free because such products could be, in some degree, used for manure.

Mason vs. Robertson, 139 U. S., 624, would seem to deny to *Magone vs. Heller* the interpretation placed upon it by the Court of Appeals. In that case this Court held that bichromate of soda, though not mentioned *eo nomine*, was specially enumerated in the chemical schedule by the words "all chemical compounds and salts by

"whatever name known," and did not fall as a non-enumerated article, under the similitude clause, to be rated upon a comparison of "material, quality, texture, " or the use to which it may be applied." In the case at bar, the effort to make "tapioca flour" dutiable is based upon the general language of a clause providing for articles bearing similitude to starch in quality and use.

It seems to be clear that Congress did not intend that a substance, designedly placed by its commercial name on the free list because of its single and only chemical quality as starch, should also, because of that very same quality, be dutiable as a preparation fit for use as starch.

The Court below must have fallen into an error in holding that the indefinite and general language of the starch clause was a more specific provision than the designation *eo nomine* of the free list.

II.

The classification ordered by the Court was also erroneous, we respectfully submit, in its determination that tapioca flour was a preparation fit for use as starch because:

The imported article was not a "preparation." Again: "Fitness for use as starch," within the meaning of the law, must mean fitness for use as commercial starch, which fitness must be shown by its predominant use for like purposes with commercial starch.

"Tapioca flour" is not a "preparation." It is a chemical starch, in its crudest and first form. It has

undergone no process of manufacture, no change since it was separated from the fibrous material of the plant by scraping and washing (find. III, p. 17).

The Revised Statutes (Sec. 2505) assessed starch in the following words: "Starch *made* of potatoes or corn, " one cent per pound, * * *made* of rice or any other " material, three cents per pound. * * "

The Act of 1883 said: "Potato or corn starch, two " cents per pound, rice starch, two and one-half cents, " other starch, two and one-half cents per pound."

Tapioca and cassava were on the free list of each of these laws.

In *Chung Yune vs. Kelly*, 14 Fed. R., 639, the question came before Judge Deady whether the very article now under consideration, which was "for the greater " part composed of starch granules and (which) may be " used for starch " was "starch * * made of rice " or any other material." The Court asked the jury whether the article was "a starch known to commerce " as such, and made and intended to be used primarily " by laundrymen in the stiffening and polishing of " clothes." It assented to the correctness of a verdict in the negative and held that the article was not "made or manufactured starch or known to commerce as such." It, also, held that its designation *eo nomine* made it free in any case.

In *Townsend vs. U. S.*, 5 C. C. A., 489, the Court of Appeals for the Second Circuit held regarding the same article, that it had "never been manufactured into commercial starch," though, chemically, a starch.

This last decision was upon the claim made by the Collector that "tapioca flour" was a "preparation fit for use as starch."

The Court of Appeals in the decision now asked to be reviewed held that the facts established the fitness of tapioca flour for use as starch. These facts were, *first*, its actual use in laundry work by Chinese laundrymen on the Pacific Coast and by some white laundrymen, who mixed the article with commercial starch to a slight extent; *second*, the general use of tapioca flour throughout the Eastern States for thickening colors, book-binding, paper making, ink making, manufacture of a substitute for gum arabic, etc., etc., such uses being "for starch purposes." As pure starch can have no use other than as starch, in the chemical sense, the finding of the fitness of tapioca flour for use as starch is literally correct. Is this the use "as starch" intended by the Act of Congress to be the test of the dutiability of the imported article?

We submit that it is not. The actual use of tapioca flour for laundry purposes by a handful of Chinese on the Pacific Coast, does not prove fitness for use by the millions of inhabitants of the country. A fair practical illustration of this fact is found in the Appraiser's decision, No. 1817, reprinted on page **23** of this brief. "Olive oil for manufacturing or mechanical purposes and unfit for eating" was free under the Act of 1890. "Olive oil, fit for salad purposes," was dutiable. The imported article was shown to be used by large numbers of Italians and Spanish of the poorer classes in our

large cities for salad purposes, and one witness testified that it could be rendered fit for eating by "cutting down with cotton-seed oil." It was shown that the American people used the article for oiling machinery, not for eating. The Appraisers held that "fit for salad purposes" means "ordinarily regarded as fit for eating purposes, as determinable by its use for such purposes," and that the peculiar habits of a few thousand foreigners, brought from the home whence poverty had, perhaps, driven them, cannot control the classification of an article for 65,000,000 of people.

The fitness of tapioca flour for starch purposes has not been established by any proof of its use throughout the land. The findings and the evidence clearly show that such use is confined to a few foreigners in one part of the country. It has never had a place in the markets as commercial starch, or as a substitute for that article, notwithstanding the fact (found by the Court) that, previous to the imposition of the duty, it was much cheaper than manufactured starch, a circumstance naturally stated to be "significant" on this question in *Townsend vs. U. S. (sup.)*. In the case last cited, the Court was presented with some testimony of its use in the laundry, but it considered the weight of the evidence to be against the fact of such use. It held that tapioca flour was "not manufactured in this country into the article known as starch" and that it "was not known as a substitute therefor," and that its actual use for purposes analogous to those for which commercial starch is used, did not make it "starch, or a preparation fit for

use as starch." The word "fit," as used in the tariff, means "commercially fit." (*Paper Co. vs. Cooper*, 46 Fed. R., 186.) Even "common use" does not of itself make a thing "suitable"; (*White vs. U. S.*, 69 Fed R., 93) it must be "actually, and not theoretically fit for use." (*Townsend vs. U. S.*, *sup.*)

It is well settled that neither the intention of the importer, nor the use after importation of any article, can determine its classification. (*Magone vs. Heller*, *sup.*)

"In order to produce uniformity in the imposition of duties, the dutiable classification of articles imported must be ascertained by an examination of the imported article itself, in the condition in which it is imported. In order to be dutiable as 'watch materials,' the article, when imported, must be in such form of manufacture as to show its *adaptation* to the making of watches." (*Worthington vs. Robbins*, 139 U. S., 341) In other words, the fitness of the article for use in the manufacture of watches must be evident to the customs officer. "In order to be 'watch materials,' " said the Court, "the article must in itself bear marks of its special adaptation for use in making watches. The fact that the article in question was used in the manufacture of watches has no relation to the condition of the article as imported, but to what afterwards the importer did with it."

The article now before this Court could be described by the customs officer by one name only. It is tapioca. No one would dream of calling it starch, or a preparation fit for use as starch. It bears no mark of "special

adaptation " to such use. If imported at New York or New Orleans, the closest inquiry would bring forth no knowledge of its fitness for any use other than as food, or as a chemical starch suitable to mix in colors, to make paste, ink, and hundreds of things. No one would say it was designed for use in the laundry.

This Court has determined that articles imported as "parts of clocks" are dutiable as such, if they are chiefly used as parts of clocks. If, however, they are as well applicable to mirrors or coach lamps as to clocks, they can then have no distinguishing characteristics as "parts of clocks."

Magone vs. Wiederer, 159 U. S., 559.

Sonn vs. Magone, 159 U. S., 418.

The Court below, in *Hartranft vs. Langfeld*, 125 U. S., 129, had charged the jury: "It is the use to which "these articles are chiefly adapted" (fitness for use), "and for which they are used that determines their "character, within the meaning of this clause of the "tariff act. * * * It is the predominant use to "which articles are applied that determines their character." The charge was affirmed by this Court and again approved by it in *Cadwalader vs. Wanamaker*, 149 U. S., 539.

See also *Robertson vs. Edelhoff*, 132 U. S., 624.

"Ordinary use" furnishes the guide for classification.

Sonn vs. Magone, 159 U. S., 421.

This Court in a late case said: "*Magone vs. Heller* "held that chief use was to be ascertained by that

“ which was commonly, practically, and generally done,
 “ and was not to be overthrown by an occasional excep-
 “ tion for practical or experimental purposes.”

Magone vs. Wiederer, 159 U. S., 562.

The phrase, “ substances expressly used for manure,” was decided in *Magone vs. Heller* to mean “ substances substantially available only for purposes as manure,” *i. e.*, practically fit for use as manure only. If the language there construed had been “ substances fit for use as manure,” the Court would, undoubtedly, have held “ that ‘ fit for use ’ must be read to mean ‘ practically ‘ fit only for use as manure.’ ”

The finding of the Court in the case at bar was that tapioca flour was not “ commonly used ” for laundry purposes in the United States. Its chief use, and to say the least, a very large use, was undoubtedly in the manufactures, as stated in the findings.

Evidently the Court of Appeals considered this use to be a use “ as starch.” The article being a pure starch, chemically speaking, could not, in one sense, have any possible use except “ as starch.” Its one quality forbade its use for any purpose except such as needed, or was aided by, a chemical starch. We submit, however, that it was not the intention of Congress, when it used the words “ fit for use as starch,” to say that every chemical starch used in the manufactures should pay a duty as starch, but that preparations (of course, not otherwise specifically designated), *whose predominant use was as commercial starch*, should be dutiable.

Tapioca flour was neither sold or known as commercial starch, "or as a substitute for it, except, as we have seen, by the Chinese on the Pacific Coast, where among those dealing with this people, it is locally spoken of as "Chinese starch." It did have many uses as a chemical starch, *for which purposes Congress for twenty years before the Act of 1890 permitted its free entry into the country.* During all this period starch, *i. e.* commercial starch, was dutiable. Nothing can be clearer than the fact that during this interval Congress recognized the distinction between the uses of commercial starch and mere chemical starches. During the same period the Treasury Department again and again declared that "tapioca flour" was not starch, though its uses were brought before it. Judge Deady held that it was not starch. (*Chung Yune vs. Kelly*, 14 Fed. R., 639) His judgment was not appealed from. Again, in *Tong Duck Chong vs. Kelly*, 24 Fed. Cases, p. 76 (No. 14,093), the same distinguished judge held that sago flour was not dutiable as starch, though chemically such, and though it was shown to be used for laundry purposes.

If, during all these years, tapioca flour has always been known to the tariff as tapioca and not as starch, *its use as food and in the manufactures during the same period has been as "tapioca" and not "as starch."* The re-enactment of the free list in the Act of 1890 in the same words as had been used for so long a time was, under a well-settled rule, a declaration by Congress that tapioca flour should continue to be free for the uses to which it had always been put. In this particular case,

the necessity of the application of the rule becomes apparent, in view of the fact that unless this be done, the designation *eo nomine* as free will have absolutely no meaning at all.* Pure starch can have no use except as starch. Tapioca flour, a pure starch, can be used only for starch purposes.

It was long ago decided by this Court that where an article has been for years held dutiable under a specific designation in a tariff which also contains another clause under which the article would be dutiable in the absence of the first, a change in the tariff dropping the clause under which the article had previously been classified and retaining the other, would have the effect of making the article a *non-enumerated article*. Though within the words of the retained clause, it would not be within its meaning, because Congress, under the former acts, had indicated that it should not be so classified.

De Forest vs. Laurence, 13 How., 274.

The converse of this proposition must be equally true. A classification, long existing, will be deemed to have been intended to continue when the article is referred to in a new law by the same words as in former acts, to the exclusion of a possible classification under another and novel clause which may, by general descriptive words, seem also to include the article.

The place given to the free list in the statute, subsequent to that of the starch clause in the same Act, should not be lost sight of. If the construction placed upon the starch clause by the Court of Appeals that tapioca flour is fit for use as starch be correct, then *ut*

magis valeat res quam pereat, the later clause should prevail, "as indicating the last and final expression or "determination of the lawmakers."

Powers vs. Barney, 5 Bltchford, 202.

On the hearing of this cause it was agreed that either party might offer the decisions of the Treasury Department to prove its practice regarding the assessment of duties on tapioca flour. (Trans., p. 29.)

We print these decisions as an appendix to this brief. We also beg to be allowed to refer the Court, if it seem to be worth its attention, to the testimony on the subject of the use of tapioca flour as commercial starch, *i. e.*, for laundry purposes, and the opinions given regarding its fitness for such use.

We submit, respectfully, that the petitioner should be granted the writ prayed for.

CHAS. PAGE,

Attorney for Petitioner.

APPENDIX

DECISIONS OF TREASURY DEPARTMENT,
1877-1890.

(3161.)

TAPIOCA FLOUR—FREE ENTRY OF.

Treasury Department, March 23, 1877.

Sir—The Department is in receipt of your letter of January 16 last, submitting the appeal (2972 e) of Mr. C. Wakefield from your assessment of duty at the rate of 20 per cent. ad valorem on certain tapioca flour imported by him, per "Marmion" from Singapore, December 28, 1876, and claimed to be entitled to free entry under the provision for "tapioca," in the free list, Revised Statutes.

It appears, upon investigation, that tapioca is prepared in three forms, namely: flake, pearl, and flour, and that these terms do not indicate any substantial difference in the character or quality of the article, but merely indicate its form or appearance.

The Department is of opinion that the tapioca flour in question is entitled to free entry, as claimed by the importer, and you are authorized to readjust the entry accordingly, and to forward a certified statement for the refund of the duties exacted thereon.

Respectfully,

JOHN SHERMAN,

Secretary.

Collector of Customs, Boston, Mass.

(5802.)

FREE ENTRY—TAPIOCA FLOUR.

Treasury Department, July 7, 1883.

Sir—The free list of the Act of March 3, 1883 (T. I., new, 772), provides for "root flour," and also (T. I., new, 800), for tapioca, cassava, or cassada.

The Department holds that, under these provisions, flour made from tapioca, cassava, or cassada root may be admitted free of duties, without regard to the use for which it is ultimately intended, and, consequently, that the provision (T. I., new, 269), of the tariff for "other starch" does not apply to such flour.

You will take action accordingly.

Very respectfully,

H. F. FRENCH,

Acting Secretary.

Collector of Customs, San Francisco, Cal.

(7971.)

TAPIOCA—FREE OF DUTY, THOUGH SPECIALLY IMPORTED
FOR AND USED AS STARCH.

Treasury Department, January 11, 1887.

Sir—The Department is in receipt of your letter of the 25th of October last, transmitting the appeals (8788 o, 8789 o, 8790 o, and 8791 o), of Kwong Hang On & Co., Chy Lung & Co., Lun Kwong Chong & Co., and Tong Foo & Co., from your decision assessing duty at the rate of 2½ cents per pound on certain starch imported by them under various names, such as sago, sago flour, tapioca, &c., per "San Pablo," "Rio de Janeiro,"

and "St. David," August 9 and September 7 and 9, 1886, respectively, and claimed to be exempt from duty under the provisions in the free-list (T. I., new, 772, 774, and 800), for "root-flour," "sago, sago crude, and sago flour," and "tapioca, cassava, or cassada."

It appears that you classified the article in question under the provision in Schedule G (T. I., new, 269), for "other starch," for the reason that it is imported, and is actually used as starch by the Chinese laundries throughout the States and Territories.

It was, however, decided by the Department on July 7, 1883 (Synopsis 5802), that under the above-cited provisions in the free list, flour made from tapioca, cassava, or cassada root may be admitted free of duties, "without regard to the use for which it is ultimately intended," and the collector of customs at New York, to whom the samples forwarded with your letter had been submitted, reports, under date of the 29th ultimo, that while the merchandise represented by the samples was found by the United States chemist to be chemically a starch obtained from the root of "*Janipha manihot*," or "*Jatropha manihot*," it is in its commercial character "tapioca;" that it is so returned by the appraiser under Synopsis 3161, and that on such return the merchandise is admitted free of duty at his port.

In view of this report, and of the above-cited decisions of the Department, and the provisions in the free list referred to by the appellants, you are hereby authorized to reliquidate the entries specified in said

appeals, exempting the merchandise covered thereby from duty.

Respectfully yours,

C. S. FAIRCHILD,

Assistant Secretary.

Collector of Customs, San Francisco. Cal.

(9031.)

ROOT-FLOUR OF TAPIOCA, FREE OF DUTY, THOUGH INTENDED FOR USE AS A STARCH.

Treasury Department, September 21, 1888.

Sir—The Department duly received your letter of the 30th of April, 1888, transmitting the appeal (1392 s) of Messrs. Kwong, Cheong Hing from your decision assessing duty at the rate of $2\frac{1}{2}$ cents per pound on certain so-called "flour" imported into your port, per "Lennox," July 25, 1887, claimed by the appellants to be free of duty under the provisions in the free-list (T. I., 772) for "root-flour," and originally returned by the appraiser at the rate assessed under the provision in Schedule G (T. I., 269) for "other starch."

The appraiser, in his report of the 20th ultimo, called for by the Department on the 14th of May last, states that samples of the merchandise in question were submitted to the United States chemist at your port, who found the article to be tapioca starch, and that, in view of Department's decision of July 7, 1883 (Synopsis 5802), and January 11, 1887 (Synopsis 7971), which hold that flour made from tapioca, although chemically a starch, may be admitted free of duties under the pro-

vision for "tapioca" (T. I., 800), without regard to the use for which it is ultimately intended, the appeal would appear to be well founded.

You are, therefore, authorized to reliquidate the entry, and to take measures for refunding the duties exacted.

Respectfully yours,

I. H. MAYNARD,

Acting Secretary.

Collector of Customs, New York.

(13545. G. A. 1817.)

OLIVE OIL UNFIT FOR SALAD PURPOSES.

Before the U. S. General Appraisers at New York, November 2, 1892.

In the matter of the protests, 1604 b—7436 of E. J. Lavino & Co., against the decision of the Collector of Customs at Philadelphia, as to the rate and amount of duties chargeable on certain olive oil, imported per "British Prince," April 5, 1892.

Opinion by Somerville, General Appraiser.

The merchandise in question is olive oil, imported from Smyrna, in April, 1892.

The local appraiser at Philadelphia reports that in his judgment "it is not fit for table use, although it is undoubtedly so used by certain classes of foreigners among us."

The importers, in the hearing held at Philadelphia, testified that it was imported in bond and was shipped by thousands of tons from Smyrna to England, Ger-

many, and America, for use as machinery oil; that they sold it to wool manufacturers, and had never been able to find a customer who would use it for eating purposes.

One witness, who dealt in olive oil, testified that it is rendered fit for eating purposes by being "cut down with cotton-seed oil." All the witnesses concur in the conclusion that it is a very low grade of olive oil, and the weight of the testimony is to the effect that it is not ordinarily used as a salad oil or for eating purposes by persons generally in this country, but only by a certain class of Italian citizens, who exclusively use it.

The examiner of oils in the appraiser's department at New York testifies that such oil is "used by Italians in large numbers in New York City," and by some Spaniards, but "not by Americans to any extent," or by any other classes.

The merchandise was classified by the collector, under paragraph 44 of the new tariff act, as "olive oil, fit for salad purposes," and assessed at 35 cents per gallon.

It is claimed as free of duty under paragraph 661, "as olive oil for manufacturing or mechanical purposes, unfit for eating, and not otherwise provided for" in said tariff act.

We are of the opinion that the phrase "fit for salad purposes" means ordinarily regarded as fit for eating purposes, as determinable by its use for such purposes. If it is only used by a small class of persons (a few thousand at most) of a particular nationality, or who immigrate from a particular country (it may be from stress of poverty or from national idiosyncrasy), that

fact does not control the classification for the sixty-five millions of inhabitants of this country.

We accordingly find as facts:

(1) That the olive oil in question is fit for manufacturing and mechanical purposes and was imported for that use, and is commonly and chiefly used for such purposes.

(2) That it is rarely used for eating or salad purposes, and then only by a small class of citizens, mainly Italians; and that it is not fit for salad or eating purposes within the meaning of the present tariff act.

The board passed on an importation of olive oil substantially of the same kind with this, in decision G. A. 565, and held that it was not fit for eating purposes.

The protest is sustained and the collector's decision reversed. He is instructed to reliquidate the entry accordingly.

The Evidence as to the Fitness of Tapioca Flour for Use as Starch.

In the case at bar, the fitness of the article for use as starch, so far as reliance is placed on actual use, is insisted upon, because a few hundred Chinese laundrymen throughout this coast avail themselves of it for laundry purposes. Whether they mix it with wheat or corn starch in their work, we do not know, but the few American laundrymen who testified to its uses, all agree that it is good for mixing purposes only. (*Williams*, 113; *Doherty*, 118.) The last named witness mixes it in the ratio of one-tenth. (120.) Some of the laundry-

men produced specimens of starched clothes which had been made up by themselves with "China starch." They thought good work could be done with it, but on cross-examination they all declined to admit that the results produced before the Appraisers were good specimens of what their laundries could do. (*Bartlett*, 116; *Ferguson*, 135.) *Bartlett*, 115, said there was more economy in the more expensive starches; they do quicker and better work. An employee will do one-third more work with better starch. If wheat starch did not do better in working every day, he would not pay almost double for it. (117.) *Doherty* admits that China starch was largely cheaper than American starch a few years ago, and says he would not care about using it alone. (120.) *Ferguson* says he does not consider the work done by it to be superior work. (137.) These witnesses prove that the article cannot be profitably used as starch. *Price*, the chemist, says that, in all his reading and experience, he had never come across any mention of the use of the article for laundry purposes. (100.) These witnesses were produced by the Collector.

Falkenau (193), the chemist, made a practical test of the article, as a starch. He found that it took a longer time to boil than wheat or corn starch. *Cumbalk*, the dealer in starches, says that the superiority of wheat over corn starch lies in the quickness of the penetrating power of the former, and thereby its labor saving quality, (224). *Falkenau* further found that the "tapioca flour," *after boiling*, showed more unruptured cells.

The rupturing of the cells releases the starchy substance and makes it available. The presence of unbroken cells makes the starch rough. The color of garments starched with it was not as white. It was of a yellowish cast, and did not appear as smooth. There was, also, a peculiar odor to it. (194.)

It is thus evident that the article, though actually used by a class in San Francisco and vicinity for starching purposes, and, though susceptible of being manufactured into starch, is not fit for use as starch *in the commercial meaning of the words*. It is not accepted by the community at large, because it yields less of the starchy substance, requires more labor in its application, and does not do good work. Its results are neither white nor smooth, the essentials of starch, as known to commerce. These elements determine its unfitness, commercially, as a competitor with other starches.

Cumbalk (221), who has visited all the steam laundries, almost, of the country, never heard of the use of the article in question as starch.

Service of a copy of the writ
is hereby admitted this 22nd
of November 1897.

H. J. Fiske U.S. atty.
By Samuel Knight Apptd. atty.
Counsel for John H. Wm.
Collector.

36
No. 202. 2

Brief of Page, Britton & Browne
for Petitioners

RECEIVED
JAN 19 1899

JAMES H. MCKENNEY,
Clerk.

Filed Jan. 19, 1899.
Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 202.

CHEW HING LUNG & CO., PETITIONERS,

vs.

JOHN H. WISE, COLLECTOR, &c.

BRIEF FOR PETITIONERS.

CHARLES PAGE,
Attorney for Petitioners.

A. T. BRITTON,
A. B. BROWNE,
Of Counsel.

IN THE
Supreme Court of the United States.

IN THE MATTER OF THE APPLICATION OF
JOHN H. WISE, COLLECTOR, ETC.,

Appellant,

vs.

CHEW HING LUNG & CO.,

Appellee.

**Brief on Petition of Chew Hing Lung & Co. for
Writ of Certiorari.**

The question involved in this cause is whether certain "tapioca flour" was entitled at the time of importation to entry free of duty, under the McKinley bill, or was dutiable, under the same Act, at the rate of two cents per pound.

The finding of the Circuit Court (find. V, p. 18, opinion, p. 22), which is accepted by the Court of Appeals, and is amply supported by the evidence, by the decision of the Board of General Appraisers, and the rulings of the Treasury Department during the last twenty years, is, that "in the general importing markets of the United States," the article has been and is "commercially known as 'tapioca flour.'" In those markets "the term 'tapioca' includes that article in three forms, viz.: flake tapioca, pearl tapioca, and tapioca flour." (Find. V, p. 18.)

The importers claimed that the article was described *eo nomine* in the free list, and was duty free. The Act of 1890 provides:

"Sec. 2. * * * Unless otherwise specially provided
"for in this Act, the following articles, when imported,
"shall be exempt from duty:

"488. Arrowroot, raw or unmanufactured.

"695. Sago, crude, and sago flour.

"730. Tapioca, cassava or cassady."

The Court further found, however, that the imported article, which "consists of the starch grains obtained
"from the manihot root by washing, scraping, and
"grating, or disintegrating it into a pulp," and drying, "is nearly pure starch" (find. III, p. 17), and that it is "fit for use as starch in laundry work, *in the sense*
"that by its use clothes can be starched, but it is not com-
"monly used in such work as starch throughout the United
"States; and is not known to be so used except on the
"Pacific Coast" (find. VIII, p. 19), where Chinese laundrymen use it for such purpose, and, to a slight extent, as food. White laundrymen, in some instances, in San Francisco, use it to mix with wheat or corn starch (find. IV, p. 18). White people there, in dealing with Chinamen, call the article "Chinese starch."

In the Eastern States the article was used "for starch
"purposes by calico printers and carpet manufacturers
"to thicken colors, for bookbinding, in the manufacture
"of paper, filling in painting, manufacture of a substitute for gum arabic and other gums, also as an adul-
"terant in the manufacture of candy in some cases, and
"other articles" (find. VII, p. 19).

Upon these facts, the Collector insisted that the article was properly dutiable under paragraph 323:

“ Starch, including all preparations, from whatever substance produced, fit for use as starch, two cents per pound.”

The Circuit Court held that the article had been properly decided to be free by the Board of General Appraisers, and affirmed their action.

Upon appeal, the Court of Appeals, *upon the findings*, reversed the Circuit Court, holding that the designation of the article *eo nomine* as free must give way to what it decided to be *a more specific provision* regarding it, viz.: that, as “ a preparation fit for use as starch,” Congress intended it should pay a duty. The findings of the Circuit Court were held to sufficiently establish such fitness for use as starch.

The petitioner submits that the classification ordered by the Court of Appeals was erroneous, because:

I.

The article was designated by its commercial name as free. Such specific designation must control a general description, whether of quality or use, in the absence of evidence, in the act, which shows a special intent by Congress that in a given case or condition, the article shall be classified otherwise than as free.

“ The commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of tariff laws.”

Robertson vs. Solomon, 120 U. S., 412.

Sonn vs. Magone, 159 U. S., 422.

Cadwalader vs. Zeh, 151 U. S., 171.

Dejonge vs. Magone, 159 U. S., 562.

“ When Congress has designated an article by its specific name, and imposed a duty upon it by such name, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it.”

Arthur vs. Lahey, 96 U. S., 118.

The word “ handkerchiefs ” was held to be denominative of the article imported and to control the descriptive words “ linen embroideries,” although the handkerchiefs were of linen and embroidered. The “ test of embroidery,” otherwise applicable, must give way to the specific designation.

Robertson vs. Glendenning, 132 U. S., 158.

Barber vs. Schell, 107 U. S., 617.

Oil, obtained by distillation, which was a form of paraffine, though not the article known as “ paraffine oil,” was held to be free as “ paraffine ” and not dutiable as a product or preparation known as “ distilled oil.”

* * * “ The use by Congress of the single word “ paraffine,” without any qualification, manifests an intention to cover, at least, all varieties of the article which were known when the act was passed.”

Shoellkopf vs. U. S., 71 Fed., 694 (C. C. A.).

“ Acids ” being free and “ preparations of coal tar ” dutiable, the Court of Appeals said: “ As one (clause)

"imposes duty and the other exempts from duty, it is obvious that Congress did not intend both provisions to apply to the same article." The article being an acid, it was held to be designated *eo nomine* and, therefore, free.

Matheson vs. U. S., 71 Fed. R., 394.

"Tapioca" was on the free list when the Act of 1890 was passed, as it had been for twenty years. "Tapioca flour" has always been an acknowledged form of tapioca; it is that article in its crudest form. The commercial designation as such was unquestioned by the Circuit and Appellate Courts. The Treasury Department, as shown by repeated rulings printed in an appendix to this brief, has always recognized its name and character and enforced its right to free entry.

See 16 Stat., 268, Rev. Statutes, Sec. 2505.

Act of 1883, 22 Stat., 521.

Under such circumstances, the rulings of the Department carry much weight in the courts.

Robertson vs. Downing, 127 U. S., 613.

U. S. vs. Hill, 120 U. S., 169, 182.

U. S. vs. Wotten, 50 Fed. R., 693, *affirmed in* 53
53 F. R., 344.

Swayne vs. Hager, 13 Saw., 621.

The Court of Appeals, in the case now at bar, decided that the general language of the Starch Clause, assessing duty on "starch or any preparation fit for use as starch" was, by reason of the *use* therein mentioned, a

more specific provision than the designation by commercial name. *Magone vs. Heller*, 150 U. S., 70, was found to be authority for this position. In this, we submit, that the Court was clearly wrong. We cannot see how an interpretation can be placed on that case which is so far at variance with understood rules. Under the ruling adopted, sago and arrowroot, both chemically pure starches and both on the free list, would also be dutiable. Tapioca flour is sometimes called Brazilian arrowroot (U. S. Dispensatory, p. 1754). It needs only the application of heat to make it pearl and flake tapioca, both well known food substances (find. III, p. 17.)

In *Solomon vs. Arthur*, 102 U. S., 208, it had been held that the words "manufactures of mixed materials, in part of cotton," etc., were not a "name for goods." * * * "We think, said the Court, "it is very clear they are merely descriptive." * * * "It is sometimes the case, no doubt, that certain articles are so obviously intended to be included in a particular grouping or classification, as to *repel* any suggestion that they are meant to be embraced in a different part of the law, though literally applicable to them. But this can not be said in the case now before us. *The goods in question have no such inseparable relation to one form of description exclusive of the other*; nor are they so clearly intended to be embraced in any particular grouping or classification, as to *repel* or prevent the application to them of the clause under which they were assessed."

If there can be no question of the fact that tapioca

flour commercially falls under the name of tapioca, we submit that it would be difficult, indeed, to find in the general words, "any preparation fit for use as starch," such an expression of the "obvious" intention of Congress as would "repel or prevent the application" to it of the rate of duty by designation *eo nomine*. If we consider, further, the fact that tapioca, sago, and arrow-root are all chemically pure starch, that they are all food substances, used in the sick room; that any of these articles may, to some extent, and by reason only of its starchy qualities, be used for laundry purposes, and that none of them can have any use except as starch in some way, and that this quality has been that which for years has made it desirable that the substances should be free, all of which facts "Congress must be presumed to have known," (*Dejonge vs. Magone*, 159 U. S., 567) we shall find ourselves driven, in support of the judgment of the Court of Appeals, to say that the free list, as to these articles, was intended by it *to have no operation whatever*, and that words used in all the tariff acts since 1870 ceased to have their well understood meaning when they were again used in the Act of 1890.

Magone vs. Heller, 150 U. S., 70, we submit, was not correctly read by the Court of Appeals. In that case this Court held that the intention of Congress to make free any chemical product (though by name dutiable), if it should be "expressly used for manure," was "*manifest*" from the fact that, in the clause declaring such manure substances free, articles otherwise dutiable

as chemical products, were mentioned by name as free, if of use for fertilizing the ground, within the meaning of the free list. This decision was within the rule of *Solomon vs. Arthur* (*sup.*), which conceded the possibility of an exception to the rule of specific designation in cases where "certain articles are so obviously intended to be included in a particular grouping or classification as to *repel any suggestion* that they are meant to be embraced in a different part of the law, though literally applicable to them."

But the starch clause contains no words manifestly, or in any way indicating that its terms shall include articles named in the free list, nor is there anything in *Magone vs. Heller* which justifies the assumption that, because an article on the free list may be used, by reason of its chemical qualities in place of starch, to some extent, it shall, therefore, be taken from that list and made dutiable as starch. The reasoning of this Court excludes the thought that if the words there under construction had been merely "manures and all substances fit for manure," it would have held that chemical products, dutiable *eo nomine*, were intended to be free because such products could be, in some degree, used for manure.

Mason vs. Robertson, 139 U. S., 624, would seem to deny to *Magone vs. Heller* the interpretation placed upon it by the Court of Appeals. In that case this Court held that bichromate of soda, though not mentioned *eo nomine*, was specially enumerated in the chemical schedule by the words "all chemical compounds and salts by

"whatever name known," and did not fall as a non-enumerated article, under the similitude clause, to be rated upon a comparison of "material, quality, texture, " or the use to which it may be applied." In the case at bar, the effort to make "tapioca flour" dutiable is based upon the general language of a clause providing for articles bearing similitude to starch in quality and use.

It seems to be clear that Congress did not intend that a substance, designedly placed by its commercial name on the free list because of its single and only chemical quality as starch, should also, because of that very same quality, be dutiable as a preparation fit for use as starch.

The Court below must have fallen into an error in holding that the indefinite and general language of the starch clause was a more specific provision than the designation *eo nomine* of the free list.

II.

The classification ordered by the Court was also erroneous, we respectfully submit, in its determination that tapioca flour was a preparation fit for use as starch because:

The imported article was not a "preparation." Again:

"Fitness for use as starch," within the meaning of the law, must mean fitness for use as commercial starch, which fitness must be shown by its predominant use for like purposes with commercial starch.

"Tapioca flour" is not a "preparation." It is a chemical starch, in its crudest and first form. It has

undergone no process ~~of manufacture~~, no change since it was separated from the fibrous material of the plant by scraping and washing (find. III, p. 17).

The Revised Statutes (Sec. 2505) assessed starch in the following words: "Starch *made* of potatoes or corn, "one cent per pound, * * *made* of rice or any other "material, three cents per pound. * * "

The Act of 1883 said: "Potato or corn starch, two "cents per pound, rice starch, two and one-half cents, "other starch, two and one-half cents per pound."

Tapioca and cassava were on the free list of each of these laws.

In *Chung Yune vs. Kelly*, 14 Fed. R., 639, the question came before Judge Deady whether the very article now under consideration, which was "for the greater "part composed of starch granules and (which) may be "used for starch" was "starch * * made of rice "or any other material." The Court asked the jury whether the article was "a starch known to commerce "as such, and made and intended to be used primarily "by laundrymen in the stiffening and polishing of "clothes." It assented to the correctness of a verdict in the negative and held that the article was not "made or manufactured starch or known to commerce as such." It, also, held that its designation *eo nomine* made it free in any case.

In *Townsend vs. U. S.*, 5 C. C. A., 489, the Court of Appeals for the Second Circuit held regarding the same article, that it had "never been manufactured into commercial starch," though, chemically, a starch.

This last decision was upon the claim made by the Collector that "tapioca flour" was a "preparation fit for use as starch."

The Court of Appeals in the decision now asked to be reviewed held that the facts established the fitness of tapioca flour for use as starch. These facts were, *first*, its actual use in laundry work by Chinese laundrymen on the Pacific Coast and by some white laundrymen, who mixed the article with commercial starch to a slight extent; *second*, the general use of tapioca flour throughout the Eastern States for thickening colors, book-binding, paper making, ink making, manufacture of a substitute for gum arabic, etc., etc., such uses being "for starch purposes." As pure starch can have no use other than as starch, in the chemical sense, the finding of the fitness of tapioca flour for use as starch is literally correct. Is this the use "as starch" intended by the Act of Congress to be the test of the dutiability of the imported article?

We submit that it is not. The actual use of tapioca flour for laundry purposes by a handful of Chinese on the Pacific Coast, does not prove fitness for use by the millions of inhabitants of the country. A fair practical illustration of this fact is found in the Appraiser's decision, No. 1817, reprinted on page 23 of this brief. "Olive oil for manufacturing or mechanical purposes and unfit for eating" was free under the Act of 1890. "Olive oil, fit for salad purposes," was dutiable. The imported article was shown to be used by large numbers of Italians and Spanish of the poorer classes in our

large cities for salad purposes, and one witness testified that it could be rendered fit for eating by "cutting down with cotton-seed oil." It was shown that the American people used the article for oiling machinery, not for eating. The Appraisers held that "fit for salad purposes" means "ordinarily regarded as fit for eating purposes, as determinable by its use for such purposes," and that the peculiar habits of a few thousand foreigners, brought from the home whence poverty had, perhaps, driven them, cannot control the classification of an article for 65,000,000 of people.

The fitness of tapioca flour for starch purposes has not been established by any proof of its use throughout the land. The findings and the evidence clearly show that such use is confined to a few foreigners in one part of the country. It has never had a place in the markets as commercial starch, or as a substitute for that article, notwithstanding the fact (found by the Court) that, previous to the imposition of the duty, it was much cheaper than manufactured starch, a circumstance naturally stated to be "significant" on this question in *Townsend vs. U. S.* (*sup.*). In the case last cited, the Court was presented with some testimony of its use in the laundry, but it considered the weight of the evidence to be against the fact of such use. It held that tapioca flour was "not manufactured in this country into the article known as starch" and that it "was not known as a substitute therefor," and that its actual use for purposes analogous to those for which commercial starch is used, did not make it "starch, or a preparation fit for

use as starch." The word "fit," as used in the tariff, means "commercially fit." (*Paper Co. vs. Cooper*, 46 Fed. R., 186.) Even "common use" does not of itself make a thing "suitable"; (*White vs. U. S.*, 69 Fed R., 93) it must be "actually, and not theoretically fit for use." (*Townsend vs. U. S.*, *sup.*)

It is well settled that neither the intention of the importer, nor the use after importation of any article, can determine its classification. (*Magone vs. Heller*, *sup.*) "In order to produce uniformity in the imposition of duties, the dutiable classification of articles imported must be ascertained by an examination of the imported article itself, in the condition in which it is imported. In order to be dutiable as 'watch materials,' the article, when imported, must be in such form of manufacture as to show its *adaptation* to the making of watches." (*Worthington vs. Robbins*, 139 U. S., 341) In other words, the fitness of the article for use in the manufacture of watches must be evident to the customs officer. "In order to be 'watch materials,'" said the Court, "the article must in itself bear marks of its special adaptation for use in making watches. The fact that the article in question was used in the manufacture of watches has no relation to the condition of the article as imported, but to what afterwards the importer did with it."

The article now before this Court could be described by the customs officer by one name only. It is tapioca. No one would dream of calling it starch, or a preparation fit for use as starch. It bears no mark of "special

adaptation" to such use. If imported at New York or New Orleans, the closest inquiry would bring forth no knowledge of its fitness for any use other than as food, or as a chemical starch suitable to mix in colors, to make paste, ink, and hundreds of things. No one would say it was designed for use in the laundry.

This Court has determined that articles imported as "parts of clocks" are dutiable as such, if they are chiefly used as parts of clocks. If, however, they are as well applicable to mirrors or coach lamps as to clocks, they can then have no distinguishing characteristics as "parts of clocks."

Magone vs. Wiederer, 159 U. S., 559.

Sonn vs. Magone, 159 U. S., 418.

The Court below, in *Hartranft vs. Langfeld*, 125 U. S., 129, had charged the jury: "It is the use to which "these articles are chiefly adapted" (fitness for use), "and for which they are used that determines their "character, within the meaning of this clause of the "tariff act. * * * It is the predominant use to "which articles are applied that determines their character." The charge was affirmed by this Court and again approved by it in *Cadwalader vs. Wanamaker*, 149 U. S., 539.

See also *Robertson vs. Edelhoff*, 132 U. S., 624.

"Ordinary use" furnishes the guide for classification.

Sonn vs. Magone, 159 U. S., 421.

This Court in a late case said: "*Magone vs. Heller* "held that chief use was to be ascertained by that

“ which was commonly, practically, and generally done,
 “ and was not to be overthrown by an occasional excep-
 “ tion for practical or experimental purposes.”

Magone vs. Wiederer, 159 U. S., 562.

The phrase, “ substances expressly used for manure,” was decided in *Magone vs. Heller* to mean “ substances substantially available only for purposes as manure,” *i. e.*, practically fit for use as manure only. If the language there construed had been “ substances fit for use as manure,” the Court would, undoubtedly, have held “ that ‘ fit for use ’ must be read to mean ‘ practically ‘ fit only for use as manure.’ ”

The finding of the Court in the case at bar was that tapioca flour was not “ commonly used ” for laundry purposes in the United States. Its chief use, and to say the least, a very large use, was undoubtedly in the manufactures, as stated in the findings.

Evidently the Court of Appeals considered this use to be a use “ as starch.” The article being a pure starch, chemically speaking, could not, in one sense, have any possible use except “ as starch.” Its one quality forbade its use for any purpose except such as needed, or was aided by, a chemical starch. We submit, however, that it was not the intention of Congress, when it used the words “ fit for use as starch,” to say that every chemical starch used in the manufactures should pay a duty as starch, but that preparations (of course, not otherwise specifically designated), *whose predominant use was as commercial starch*, should be dutiable.

Tapioca flour was neither sold or known as commercial starch, "or as a substitute for it, except, as we have seen, by the Chinese on the Pacific Coast, where among those dealing with this people, it is locally spoken of as "Chinese starch." It did have many uses as a chemical starch, *for which purposes Congress for twenty years before the Act of 1890 permitted its free entry into the country.* During all this period starch, *i. e.* commercial starch, was dutiable. Nothing can be clearer than the fact that during this interval Congress recognized the distinction between the uses of commercial starch and mere chemical starches. During the same period the Treasury Department again and again declared that "tapioca flour" was not starch, though its uses were brought before it. Judge Deady held that it was not starch. (*Chung Yune vs. Kelly*, 14 Fed. R., 639) His judgment was not appealed from. Again, in *Tong Duck Chong vs. Kelly*, 24 Fed. Cases, p. 76 (No. 14,093), the same distinguished judge held that sago flour was not dutiable as starch, though chemically such, and though it was shown to be used for laundry purposes.

If, during all these years, tapioca flour has always been known to the tariff as tapioca and not as starch, *its use as food and in the manufactures during the same period has been as "tapioca" and not "as starch."* The re-enactment of the free list in the Act of 1890 in the same words as had been used for so long a time was, under a well-settled rule, a declaration by Congress that tapioca flour should continue to be free for the uses to which it had always been put. In this particular case,

the necessity of the application of the rule becomes apparent, in view of the fact that unless this be done, the designation *eo nomine* as free will have absolutely no meaning at all. Pure starch can have no use except as starch. Tapioca flour, a pure starch, can be used only for starch purposes.

It was long ago decided by this Court that where an article has been for years held dutiable under a specific designation in a tariff which also contains another clause under which the article would be dutiable in the absence of the first, a change in the tariff dropping the clause under which the article had previously been classified and retaining the other, would have the effect of making the article a *non-enumerated article*. Though within the words of the retained clause, it would not be within its meaning, because Congress, under the former acts, had indicated that it should not be so classified.

De Forest vs. Lawrence, 13 How., 274.

The converse of this proposition must be equally true. A classification, long existing, will be deemed to have been intended to continue when the article is referred to in a new law by the same words as in former acts, to the exclusion of a possible classification under another and novel clause which may, by general descriptive words, seem also to include the article.

The place given to the free list in the statute, subsequent to that of the starch clause in the same Act, should not be lost sight of. If the construction placed upon the starch clause by the Court of Appeals that tapioca flour is fit for use as starch be correct, then *ut*

magis valeat res quam pereat, the later clause should prevail, "as indicating the last and final expression or "determination of the lawmakers."

Powers vs. Barney, 5 Bltchford, 202.

On the hearing of this cause it was agreed that either party might offer the decisions of the Treasury Department to prove its practice regarding the assessment of duties on tapioca flour. (Trans., p. 29.)

We print these decisions as an appendix to this brief. We also beg to be allowed to refer the Court, if it seem to be worth its attention, to the testimony on the subject of the use of tapioca flour as commercial starch, *i. e.*, for laundry purposes, and the opinions given regarding its fitness for such use.

We submit, respectfully, that the petitioner should be granted the writ prayed for.

CHAS. PAGE,

Attorney for Petitioner.

APPENDIX

DECISIONS OF TREASURY DEPARTMENT,
1877-1890.

(3161.)

TAPIOCA FLOUR—FREE ENTRY OF.

Treasury Department, March 23, 1877.

Sir—The Department is in receipt of your letter of January 16 last, submitting the appeal (2972 e) of Mr. C. Wakefield from your assessment of duty at the rate of 20 per cent. ad valorem on certain tapioca flour imported by him, per "Marmion" from Singapore, December 28, 1876, and claimed to be entitled to free entry under the provision for "tapioca," in the free list, Revised Statutes.

It appears, upon investigation, that tapioca is prepared in three forms, namely: flake, pearl, and flour, and that these terms do not indicate any substantial difference in the character or quality of the article, but merely indicate its form or appearance.

The Department is of opinion that the tapioca flour in question is entitled to free entry, as claimed by the importer, and you are authorized to readjust the entry accordingly, and to forward a certified statement for the refund of the duties exacted thereon.

Respectfully,

JOHN SHERMAN,

Secretary.

Collector of Customs, Boston, Mass.

(5802.)

FREE ENTRY—TAPIOCA FLOUR.

Treasury Department, July 7, 1883.

Sir—The free list of the Act of March 3, 1883 (T. I., new, 772), provides for "root flour," and also (T. I., new, 800), for tapioca, cassava, or cassada.

The Department holds that, under these provisions, flour made from tapioca, cassava, or cassada root may be admitted free of duties, without regard to the use for which it is ultimately intended, and, consequently, that the provision (T. I., new, 269), of the tariff for "other starch" does not apply to such flour.

You will take action accordingly.

Very respectfully,

H. F. FRENCH,

Acting Secretary.

Collector of Customs, San Francisco, Cal.

(7971.)

TAPIOCA—FREE OF DUTY, THOUGH SPECIALLY IMPORTED
FOR AND USED AS STARCH.

Treasury Department, January 11, 1887.

Sir—The Department is in receipt of your letter of the 25th of October last, transmitting the appeals (8788 o, 8789 o, 8790 o, and 8791 o), of Kwong Hang On & Co., Chy Lung & Co., Lun Kwong Chong & Co., and Tong Foo & Co., from your decision assessing duty at the rate of 2½ cents per pound on certain starch imported by them under various names, such as sago, sago flour, tapioca, &c., per "San Pablo," "Rio de Janeiro,"

and "St. David," August 9 and September 7 and 9, 1886, respectively, and claimed to be exempt from duty under the provisions in the free-list (T. I., new, 772, 774, and 800), for "root-flour," "sago, sago crude, and sago flour," and "tapioca, cassava, or cassada."

It appears that you classified the article in question under the provision in Schedule G (T. I., new, 269), for "other starch," for the reason that it is imported, and is actually used as starch by the Chinese laundries throughout the States and Territories.

It was, however, decided by the Department on July 7, 1883 (Synopsis 5802), that under the above-cited provisions in the free list, flour made from tapioca, cassava, or cassada root may be admitted free of duties, "without regard to the use for which it is ultimately intended," and the collector of customs at New York, to whom the samples forwarded with your letter had been submitted, reports, under date of the 29th ultimo, that while the merchandise represented by the samples was found by the United States chemist to be chemically a starch obtained from the root of "*Janipha manihot*," or "*Jatropha manihot*," it is in its commercial character "tapioca;" that it is so returned by the appraiser under Synopsis 3161, and that on such return the merchandise is admitted free of duty at his port.

In view of this report, and of the above-cited decisions of the Department, and the provisions in the free list referred to by the appellants, you are hereby authorized to reliquidate the entries specified in said

appeals, exempting the merchandise covered thereby from duty.

Respectfully yours,

C. S. FAIRCHILD,

Assistant Secretary.

Collector of Customs, San Francisco. Cal.

(9031.)

ROOT-FLOUR OF TAPIOCA, FREE OF DUTY, THOUGH INTENDED FOR USE AS A STARCH.

Treasury Department, September 21, 1888.

Sir—The Department duly received your letter of the 30th of April, 1888, transmitting the appeal (1392 s) of Messrs. Kwong, Cheong Hing from your decision assessing duty at the rate of $2\frac{1}{2}$ cents per pound on certain so-called "flour" imported into your port, per "Lennox," July 25, 1887, claimed by the appellants to be free of duty under the provisions in the free-list (T. I., 772) for "root-flour," and originally returned by the appraiser at the rate assessed under the provision in Schedule G (T. I., 269) for "other starch."

The appraiser, in his report of the 20th ultimo, called for by the Department on the 14th of May last, states that samples of the merchandise in question were submitted to the United States chemist at your port, who found the article to be tapioca starch, and that, in view of Department's decision of July 7, 1883 (Synopsis 5802), and January 11, 1887 (Synopsis 7971), which hold that flour made from tapioca, although chemically a starch, may be admitted free of duties under the pro-

vision for "tapioca" (T. I., 800), without regard to the use for which it is ultimately intended, the appeal would appear to be well founded.

You are, therefore, authorized to reliquidate the entry, and to take measures for refunding the duties exacted.

Respectfully yours,

I. H. MAYNARD,

Acting Secretary.

Collector of Customs, New York.

(13545. G. A. 1817.)

OLIVE OIL UNFIT FOR SALAD PURPOSES.

Before the U. S. General Appraisers at New York, November 2, 1892.

In the matter of the protests, 1604 b—7436 of E. J.

Lavino & Co., against the decision of the Collector of Customs at Philadelphia, as to the rate and amount of duties chargeable on certain olive oil, imported per "British Prince," April 5, 1892.

Opinion by Somerville, General Appraiser.

The merchandise in question is olive oil, imported from Smyrna, in April, 1892.

The local appraiser at Philadelphia reports that in his judgment "it is not fit for table use, although it is undoubtedly so used by certain classes of foreigners among us."

The importers, in the hearing held at Philadelphia, testified that it was imported in bond and was shipped by thousands of tons from Smyrna to England, Ger-

many, and America, for use as machinery oil; that they sold it to wool manufacturers, and had never been able to find a customer who would use it for eating purposes.

One witness, who dealt in olive oil, testified that it is rendered fit for eating purposes by being "cut down with cotton-seed oil." All the witnesses concur in the conclusion that it is a very low grade of olive oil, and the weight of the testimony is to the effect that it is not ordinarily used as a salad oil or for eating purposes by persons generally in this country, but only by a certain class of Italian citizens, who exclusively use it.

The examiner of oils in the appraiser's department at New York testifies that such oil is "used by Italians in large numbers in New York City," and by some Spaniards, but "not by Americans to any extent," or by any other classes.

The merchandise was classified by the collector, under paragraph 44 of the new tariff act, as "olive oil, fit for salad purposes," and assessed at 35 cents per gallon.

It is claimed as free of duty under paragraph 661, "as olive oil for manufacturing or mechanical purposes, unfit for eating, and not otherwise provided for" in said tariff act.

We are of the opinion that the phrase "fit for salad purposes" means ordinarily regarded as fit for eating purposes, as determinable by its use for such purposes. If it is only used by a small class of persons (a few thousand at most) of a particular nationality, or who immigrate from a particular country (it may be from stress of poverty or from national idiosyncrasy), that

fact does not control the classification for the sixty-five millions of inhabitants of this country.

We accordingly find as facts:

(1) That the olive oil in question is fit for manufacturing and mechanical purposes and was imported for that use, and is commonly and chiefly used for such purposes.

(2) That it is rarely used for eating or salad purposes, and then only by a small class of citizens, mainly Italians; and that it is not fit for salad or eating purposes within the meaning of the present tariff act.

The board passed on an importation of olive oil substantially of the same kind with this, in decision G. A. 565, and held that it was not fit for eating purposes.

The protest is sustained and the collector's decision reversed. He is instructed to reliquidate the entry accordingly.

The Evidence as to the Fitness of Tapioca Flour for Use as Starch.

In the case at bar, the fitness of the article for use as starch, so far as reliance is placed on actual use, is insisted upon, because a few hundred Chinese laundrymen throughout this coast avail themselves of it for laundry purposes. Whether they mix it with wheat or corn starch in their work, we do not know, but the few American laundrymen who testified to its uses, all agree that it is good for mixing purposes only. (*Williams*, 113; *Doherty*, 118.) The last named witness mixes it in the ratio of one-tenth. (120.) Some of the laundry-

men produced specimens of starched clothes which had been made up by themselves with "China starch." They thought good work could be done with it, but on cross-examination they all declined to admit that the results produced before the Appraisers were good specimens of what their laundries could do. (*Bartlett*, 116; *Ferguson*, 135.) *Bartlett*, 115, said there was more economy in the more expensive starches; they do quicker and better work. An employee will do one-third more work with better starch. If wheat starch did not do better in working every day, he would not pay almost double for it. (117.) *Doherty* admits that China starch was largely cheaper than American starch a few years ago, and says he would not care about using it alone. (120.) *Ferguson* says he does not consider the work done by it to be superior work. (137.) These witnesses prove that the article cannot be profitably used as starch. Price, the chemist, says that, in all his reading and experience, he had never come across any mention of the use of the article for laundry purposes. (100.) These witness were produced by the Collector.

Falkenau (193), the chemist, made a practical test of the article, as a starch. He found that it took a longer time to boil than wheat or corn starch. *Cumbalk*, the dealer in starches, says that the superiority of wheat over corn starch lies in the quickness of the penetrating power of the former, and thereby its labor saving quality, (224). *Falkenau* further found that the "tapioca flour," *after boiling*, showed more unruptured cells.

The rupturing of the cells releases the starchy substance and makes it available. The presence of unbroken cells makes the starch rough. The color of garments starched with it was not as white. It was of a yellowish cast, and did not appear as smooth. There was, also, a peculiar odor to it. (194.)

It is thus evident that the article, though actually used by a class in San Francisco and vicinity for starching purposes, and, though susceptible of being manufactured into starch, is not fit for use as starch *in the commercial meaning of the words*. It is not accepted by the community at large, because it yields less of the starchy substance, requires more labor in its application, and does not do good work. Its results are neither white nor smooth, the essentials of starch, as known to commerce. These elements determine its unfitness, commercially, as a competitor with other starches.

Cumbalk (221), who has visited all the steam laundries, almost, of the country, never heard of the use of the article in question as starch.

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202

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JAMES K. HICKS, CLERK

Filed April 17, 1899.
Supreme Court of the United States.

CHEW HING LUNG ET AL.,

Appellants.

vs.

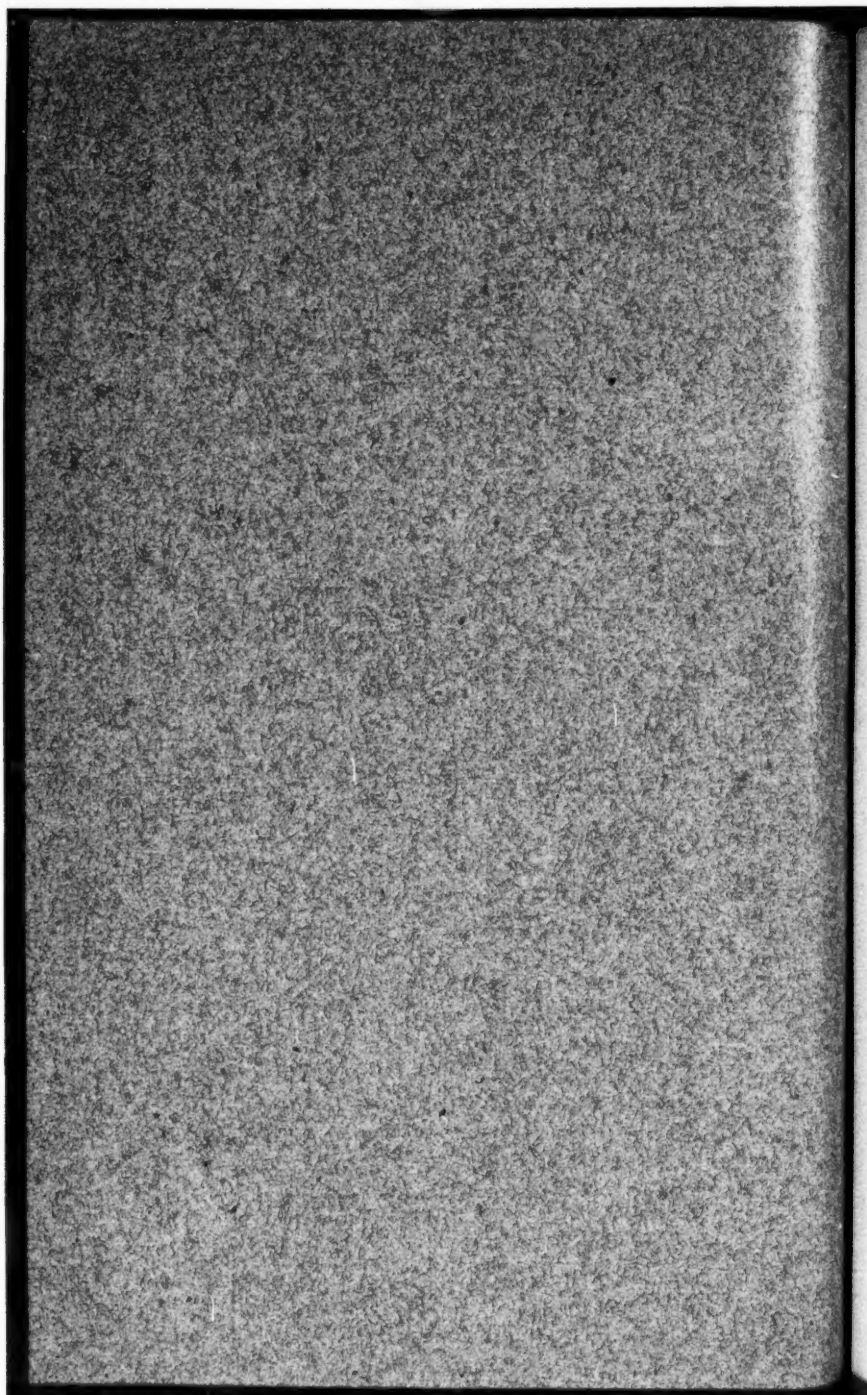
JOHN H. WISE, Collector,

Appellee.

**ADDITIONAL BRIEF ON BEHALF OF
APPELLANTS.**

ALBERT COMSTOCK,

Of Counsel



Supreme Court of the United States.

CHEW HING LUNG ET AL.
Appellants

VS.

JOHN H. WISE, Collector,
Appellee.

Additional Brief on Behalf of Appellants.

It is entirely clear that this case would not have been decided in favor of the Collector by the Circuit Court of Appeals, had not that court conceived that a different state of facts was shown, on the record herein, from that established in the Townsend case (56 Fed. Rep. 222), wherein the Circuit Court of Appeals for the Second Circuit decided the identical question now presented, in precisely the opposite way. The writer having been of counsel for the importers in the Townsend case, begs permission to present this additional brief herein, in order to enforce still further the assertion that there is no difference between that case and this on the facts, that that decision fully covers this case, and that the correct application of the law to the proven facts of both cases was that of the court in the Eastern circuit.

Careful comparison of the two decisions shows that the California court avoided taking issue with that at New York directly, on the doctrines of law asserted by

the latter, but on supposed differences in the proven facts, felt compelled, while conceding that the free list provision aptly designated the product, to consider a resultant conflict between that and the duty provision (for starch), which conflict the court at New York had found non-existent, because on the proven facts it was held that the duty provision was not applicable to tapioca flour at all.

For convenience in connection with this discussion, we have printed the decision in the Townsend case as an appendix hereto, and it will there be seen that the court dismissed the question of conflict in the following words :

“ If tapioca flour was, in our opinion, a preparation fit for use as starch, the question would have arisen whether it was specially provided for under paragraph 323, but, the conclusion being that it was not such a preparation, it has a place only in the free list.”

Starting from the sound rule that the construction will always be favored which avoids, rather than that which produces conflict, we think it can be shown by the record that the differences supposed by the California court were chiefly imaginary, and so far as they existed, were wholly inconsequential. As stated in the opinion of the Circuit Court of Appeals they were as follows :

1. That the cost of the substance in controversy, including the duty appealed from, was substantially as great as that of ordinary starches, whereas the evidence in the Townsend case had indicated a lower cost for tapioca flour than for any starch.

To this we answer: the testimony in the Townsend case referred to the cost on a duty-free basis, that having for many years prevailed, as the present record amply shows, until about the date of that case. Hence the comment of the court at New York, that "The very suggestive evidence of the unsuitableness of tapioca for commercial use as starch is, that although it is much cheaper than starch made in this country, it does not come into commercial competition with starch made here,"—remains of undiminished force. It may be well to note that this comment was based on the testimony of Duryea, the president of the domestic starch-makers, that he had never heard of tapioca flour in his commercial experience of 37 years, although he had manufactured and sold starch from "generally the range of substances from which starch is made." The California court seems impressed with the idea that in the present case it is shown that the product does compete with ordinary starch. But the record shows that many wholesale grocers and starch dealers do not carry it or know it, even in San Francisco, and we think it clear that the petty use of it by Chinese does not rise to the dignity of competition. As to any other use of it as starch, that is for discussion anon.

2. That the substance in controversy was known on the Pacific coast as "Chinese starch," and is largely used by the Chinese for the starching and stiffening of clothes, and to some extent by white people in their laundry work,—whereas in the Townsend case the court had said that the same article had never been sold as a starch, and was not considered in this country as adapted to the ordinary purposes of starch.

Our answer to this is: the supposed difference did not exist in the testimony as to the article and its use and reputation, but was really a difference in the relative values allowed to facts by the two courts. There was proof in the Townsend case,—direct, from Col-

lector's witnesses, and admissions from the importers', that tapioca flour was used in laundries, either alone or in admixture with starch of corn or wheat, and also that it was fit for such use, because it was a starch. But it appeared to be a petty or exceptional use, and by intimation it was only among the Chinese. Thus it was just such a use, in sort and in amount, as was dwelt on by the California court in the present case. And if this be the only use as starch shown for tapioca flour, there would seem little room for doubt that the court in New York was fully justified in ignoring it. Indeed, the unimportance of the fact that tapioca flour can be, or is, mixed with starch for use in the laundry, is sufficiently demonstrated by the evidence in the present record, that *stearine* is also thus mixed with starch. It is of course that any white powder, soluble in water, could be used in the same way, but as a rule they would be mere adulterants,—cheapeners,—not advantageous to the results obtainable,—and tapioca flour seems fully within such rule.

3. The opinion in the present case proceeds to allege: "It is further shown that the same article is imported from China and used in the Eastern States for starch purposes, by calico printers and carpet manufacturers, to thicken colors; in the manufacture of paper; for book binding; filling in painting; manufacture of a substitute for gum arabic and other gums, and also as an adulterant for candy, and other articles."

Were this allegation well founded, we should perhaps have to resolve a conflict between the duty provision for starch and the free list provision for tapioca. But it is not well founded, and we have studied the record with interest to see how it first appeared. Nothing in the evidence supports it, and it seems to have crept unnoticed into the findings in the circuit court. That tapioca flour is used for every one of the specified purposes is clearly proven, but that any of them are "*starch purposes*" is not even suggested by any evidence.

Paragraph 5 of the stipulation as to facts, (R., p. 17) sets forth the uses, but nowhere describes them as uses "for starch purposes." Beyond doubt this stipulation was based on the testimony in the Townsend case, the record in which we believe was in the hands of counsel on both sides when the present case was before the referee. And the very witnesses in that case who gave evidence of these several uses, declared that they never knew tapioca flour to be used as a starch. Indeed it would involve an abdication of our reasoning faculties to suppose them "starch purposes" in the sense of paragraph 323. Colors are probably oftener thickened with wheat flour than with any other substance. Is that, then, "starch"? Or such use a "starch purpose"? There is not a word of evidence that "starch", in the common acceptation of that word, was ever used to thicken colors with. Nor was starch supposably ever used in the manufacture of paper. For book binding glue, glue paste, flour paste and various animal sizings are used, but starch, we think never. Gum arabic is not starch, and the manufacture of a substitute for it is not a "starch purpose." And surely, if starch is used to adulterate candy, so are *terra alba*, chalk, and numerous other substances, so that to call that a "starch purpose" involves a violent assumption, and in the words of the court in the Townsend case (concerning a finding by the general appraisers) "hardly warrants the stress that was laid on it."

Of course it is clear that Congress did not employ the word "starch" in paragraph 323 of the law of 1890 in any such broad sense as to include the whole class of products used in sizing, stiffening and the like. An examination of paragraph 324, in which many of them (Dextrine, Burnt starch, Gum substitute, British gum) are designated at a less rate of duty, demonstrates that, if demonstration were needed.

Yet on this unfounded assumption by the California court, the decision of that court must chiefly have pro-

ceeded. For the other supposed differences between the facts in this and in the Townsend case cannot be thought to have led the court into asserting as to tapioca flour a conflict between the two provisions involved. As a matter of fact, in harmony with the stipulation when properly read, tapioca flour is employed, to the extent of a preponderance so great as to constitute nearly its entirety, as a body for liquid colors in printing calicoes, to facilitate placing the colors on the fibre, after which it is steamed and washed away. In this use it would appear from the record that it does not come into either competition or contact with starch at all. *

Were there conflict between the starch provision and the free list, no light whatever could be derived, for its settlement, from the disappearance of the provision for "root flour" for the free list of the Act of 1890, which the California court thought important, for the reason that tapioca flour, a known and recognized variety or form of tapioca, was never free as a root flour, but always under the specific denomination of "tapioca, cassava or cassady." *That* provision was not dropped from the free list in 1890, nor has it yet been dropped. Under that, and no other, had the Treasury department for nearly 20 years held tapioca flour free, and so far from seeing in the changes of 1890 an intent to end its right of free entry, it is to us inconceivable that Congress, with any such intent, would have left the oft-construed provision for "tapioca, cassava or cassady" in all its fulness in the free list of the law. Those words had long before come, by contemporaneous construction, to include and designate tapioca flour, as is apparent from the résumé of Treasury decisions in the brief heretofore filed for appellants; hence when Congress again employed them unchanged, it surely employed them

with an unchanged intent to include and designate this substance.

Nor is the language of the starch provision in the law of 1890 one whit more exhaustive than that of the like provisions of those earlier acts in which it had stood for decades, side by side with the provision for tapioca, which the Treasury said prevented tapioca flour from assessment as starch. Will any one maintain that the provision of 1890 covers any more starch than that for "potato or corn starch, rice starch *and other starch*" in the Act of 1883?

Such supposed conflict would be as little enlightened by the decision of this Court in *Magone vs. Heller*, 150 U. S. 70.

The free list provision therein held to oust a specific provision for sulphate of potash, was as follows: "Guano, manures, and all substances expressly used for manure." It was the precise force of these words, on which the decision of the case rested;—recast the provision to make it parallel with that for starch, and it would become "all substances used for manure";—language which this court would unquestionably hold should defer to a provision for sulphate of potash. Recast the starch provision into parity with that in the *Heller* case; it would then be "all substances *expressly* used as starch", and this description would completely exclude tapioca flour, whose use as "starch" is its least prevalent use.

It cannot fairly be maintained that paragraph 323 is more specific than paragraph 730, as including only one of the three commercial forms of tapioca, for it is

clear that on the narrowest construction, the starch provision covers four or five known varieties of commercial "starch," while on the construction which would make it include tapioca flour at all, it would, as we hereafter point out, be of almost unlimited scope. On the other hand, paragraph 730 includes but one substance which could come within any construction, however broad, of paragraph 323, and is a designation of only three substances, or three forms of the same substance. So that from any point of view, and were there not readier solutions at hand, the free list provision would take precedence as the more specific, pursuant to the established rule of interpretation.

Still considering an assumed conflict, the proven relation between the three forms of tapioca, whereof the first and crudest is the flour, logically forbids its exclusion from the free entry which is accorded to pearl and flake, preparations from it. It has never been the method of any tariff law to tax raw, or relatively raw materials, while admitting their advanced forms to free entry. And in the present instance the wording of the free list provision points out this substance, tapioca flour, with singular precision. In view of the proven commercial designation, the one word "tapioca" would evidently have sufficed to designate all three forms. But Congress has added a specification of "cassava or cassady," which words refer to nothing, and no form of thing, known as an article of commerce, except tapioca flour. The Century Dictionary gives the common meaning of "tapioca" as "a farinaceous substance prepared from cassava by drying it while moist upon hot plates," and defines cassava as the first starchy product from the roots of the plant. All forms of tapioca are thus

cassava in substance, but pearl and flake are prepared from it only by means of physical changes in their cell structure, while tapioca flour alone is cassava *per se*.

Again, the intent to have this substance admitted free is further made evident when we examine paragraph 492,—a provision carried unchanged through many acts. As already shown, the primary use of tapioca flour is in that branch of dyeing known as calico printing, and it is an article *in a crude state* so used. Par. 492 is a residuary clause comparable to those at the end of the metal, the glass, and other schedules, and its object is that if any crude material of the dyeing and tanning industries has not been clearly made free elsewhere (as most of them have), this shall declare it free beyond cavil.

There is probably nothing more entirely within the realm of common knowledge than that the recognized "starches" of commerce and the arts are wheat, corn, potato and rice starches. All these are extensively and primarily used in the laundry, the country over, by our own citizens of all nationalities, and are carried by all dealers, as "starch." Step outside this short, practical list, and we at once find ourselves confronted with a range of substances comparable almost to the constellations of heaven. Every plant in the world's vast flora yields its own especial *starch*. It is inconceivable that the starch paragraph in the tariff law was meant to invite Collectors to the discovery of all the *starches* imported, or their adaptability to use. The Century Dictionary is unable to provide a more specific definition of "starch" than "a proximate principle of plants",—followed by half a column of description of its chemical characteristics, and ending with the significant statement that "starch forms the greatest

part of all farinaceous substances, particularly of wheat flour." By other paragraphs of the act under discussion, Congress has shown that it entertained no such conception of what was "starch" under paragraph 323. Thus in Schedule G, cornmeal, oatmeal, rice flour, rye flour and wheat flour are successively provided for by name,—a labor entirely useless if every preparation chemically starch is to go to paragraph 323. The same comment might be equally applied to the designations of arrow root, farina and sago flour in the free list. All are *starches* in the same chemical sense as is tapioca flour. It seems clear that Congress meant the word "starch" in paragraph 323, just as it meant the word "salt" in paragraph 322, to refer to the common and received sense of the word as when used alone. There are probably even more *salts* than there are *starches*, but it has never been held that all must find place, for duty purposes, under paragraph 322. Chloride of sodium is the only chemical salt taxed there, out of the thousands of salts known to commerce and the arts.

This is in harmony with the doctrine asserted by this court in *Lutz vs. Mayone*, 153 U. S. 105,—that the tariff status of an acid was not conferred on an article merely because by abstract chemical tests it was an acid, while not fulfilling the received notion of the character of acids.

On the same branch of the case is the consideration that tapioca flour never appears in the general markets of the country (we do not refer to the local San Francisco market) under any name of which "starch" forms a part. Probably the designations of the trade draw precisely the distinction which Congress intended should limit the operation of paragraph 323. One hears everywhere of "corn starch," "wheat starch," "rice starch," "potato starch":—who ever heard of "tapioca starch"? The name does not exist. Tapi-

oca flour therefore is not within any generally received sense of " starch " ; it is not by commercial designation a starch ; and it is, on the proofs in the case at bar, palpably unfit for the primary use of starch. Hence we conclude, with the Circuit Court of Appeals in the Second Circuit, that there is no conflict, as to this substance, between the starch paragraph and that in the free list which specially designates it.

ALBERT COMSTOCK,
of Counsel.

APPENDIX.

TOWNSEND V. UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

* * * * *

SHIPMAN, Circuit Judge, delivered the opinion of the Court.

The appellants, J. R. Townsend & Co., in April, 1891, imported into the Port of New York three hundred and seventy-three bags of tapioca flour. The collector assessed a duty of two cents per pound thereon, under paragraph 323 of the tariff act of October 1, 1890, 26 Stat. 567, 588, c. 1244, which imposed that duty upon "starch, including all preparations, from whatever substance produced, fit for use as starch". The importers protested against this assessment upon the ground that the article was free of duty, under the provisions of paragraph 730 of the same act, which included in the free list "tapioca, cassava, or cassady". The Board of General Appraisers affirmed the decision of the collector, and the Circuit Court, while rejecting some of the reasons that led them to their conclusion, hesitatingly affirmed their decision. The importers appealed from the judgment of the Circuit Court.

The article which is commercially known in this country as "tapioca" is obtained from the tuberous roots of the cassava or manioc plant, which is a native of Brazil. It is imported into this country in three forms, - pearl tapioca, flake tapioca and tapioca flour. The first two forms are exclusively used for food. Tapioca flour is also known commercially as tapioca, and is used to a slight extent for the thickening of soups, but mostly by calico printers and carpet manu-

facturers to thicken colors, and in the manufacture of a substitute for gum arabic or other gum. There was testimony that it is also used for the sizing of cotton goods, a purpose for which starch is also used to a certain extent. The weight of the testimony is that it is not used for laundry purposes. It is chemically a starch, because eighty-five per cent of it consists of starch. It is not manufactured in this country into the article known as "starch", and it is not known as a substitute therefor.

In the Revised Statutes, and in the tariff act of March 3, 1883, 22 Stat. 488, 503, 521, c. 121, starch made of any material was dutiable, and tapioca, cassava, or cassada, as well as root-flour, were upon the free list. The statute of 1890 enlarged the provision in regard to starch, by including in the same paragraph "all preparations, from whatever substance produced, fit for use as starch". The Circuit Judge, disagreeing with the Board of General Appraisers in their opinion that tapioca flour was not suitable for food, and was not known by the designation of tapioca, and was not in fact tapioca, was of the opinion that it was the intention of the framers of the act of 1890 to make the provision with regard to starch more comprehensive than it was before, and, if this article was in such a state of preparation as to be fit for use as starch, that it should pay the duty required by paragraph 323. He adds: "While the testimony is not altogether clear upon that precise point, I am unwilling, upon the record as it stands, to disturb the finding of the board, that the article imported here is fit for use as starch, and that being so, the conclusion follows that it is dutiable under paragraph 323".

The decision of the appeal turns upon the question, whether, under the testimony, tapioca flour can be considered as a preparation for use as starch. The article has never been sold as a starch, and is not considered in this country as adapted to the ordinary purposes of

that article, and has never been manufactured into commercial starch, but it is chemically a starch. The term "preparations * * * fit for use as starch" means preparations which are actually, and not theoretically, fit for such use, and which can be practically used as such, and not those which can be made by manufacture fit for such use. Tapioca flour is used for purposes which are analogous to those for which starch is used. It is not used, though it probably could by adequate preparation be used, for the same purposes, unless its use as a sizing can be called the same purpose. The testimony of the witness upon that subject was not sufficient to justify the stress which the Board of General Appraisers placed upon it. The very suggestive evidence of the unsuitableness of tapioca for commercial use as starch is, that, although it is much cheaper than starch made in this country, it does not come into commercial competition with starch made here.

The appellants make the point that the language of the free list exempts from duty the articles specified therein, "unless otherwise specially provided for in this act," and that tapioca is not specially provided for except in the free list. If tapioca flour was, in our opinion, a preparation fit for use as starch, the question would have arisen whether it was specially provided for under paragraph 323, but, the conclusion being that it was not such a preparation, it has a place only in the free list.

The judgment of the Circuit Court is

Reversed.

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36 Page Per Pa
Supreme Court of the United States.

Filed Nov. 21, 1899

CHEW HING LUNG,

Petitioner

JOHN H. WISE, Collector.

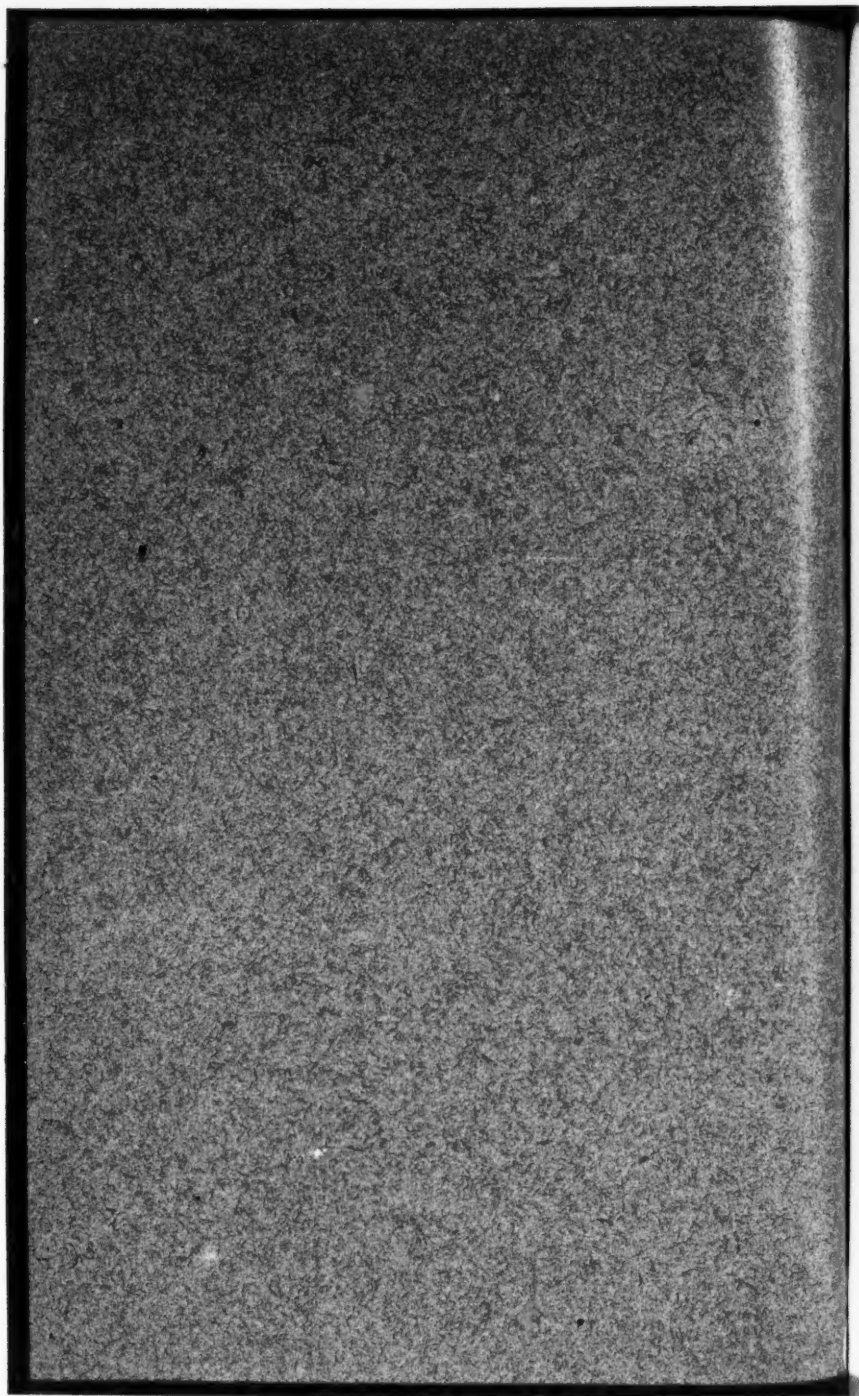
TERSE REPLIES TO THE GOVERNMENT
BRIEF.

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ALBERT COMSTOCK,

Att. for EDWARD B. BROWNE,

CHARLES PAGE,

Counsel for Petitioner



In the Supreme Court of the United States

CHEW HING LUNG,
Petitioner,

VS.

JOHN H. WISE, Collector, etc.

Terse Replies to the Government Brief.

I.

The importer's claim for free entry under paragraph 730 does not depend only on the word "tapioca" therein. The paragraph equally provides free entry for the merchandise if it be *cassava* or *cassady*. Under the stipulation and proofs, while the substance is one of the three forms of commercial tapioca, it is the only form of cassava known in the world's commerce. There is no testimony of any trading in the shrub or the root; all the proofs and all the authorities demonstrate that neither could be the subject of trade,—the poisonous element of the juice must be eliminated, and this of course is only practicable while the root is fresh and soft, and hence where and when it is first obtained from the ground. The tapioca flour is the first product after eliminating the said juice (finding 3 of circuit court, Record page 11).

Century Dictionary: "Cassava; (2) the starch derived from the cassava plant."

II.

It was never proved or stipulated that the substance (in controversy) is "used in Eastern states *for starch purposes*" (as asserted at p. 4). This is a complete mistake. The stipulation was (Record page 17,—V.) that it is "used in the Eastern states by calico printers and carpet manufacturers to thicken colors, and in the manufacture of a substitute for gum Arabic and other gums. It is also sometimes used for sizing cotton goods." The testimony contains no word of statement or indication that any of these are "starch purposes", and on the testimony of the chief handlers of tapioca flour in the United States, in the *Townsend* case, which by stipulation (Record page 18) is made substantially a part hereof, none of them are starch purposes, and the substance has no general use for any starch purpose. The circuit court in San Francisco, evidently by inadvertence, amplified in its seventh finding this stipulation of fact No. 5, but its action in so doing can have no weight, because it is a finding unsupported by any evidence (or stipulation) and against the entire weight of the evidence.

III.

The contention that tapioca flour is not embraced in the established trade meaning of the word "tapioca", is futile. The great preponderance of evidence in the case at bar from witnesses who had any commercial knowledge of the substance, was clearly that throughout this country and the world at large the term "tapioca" has always included the three forms,—pearl, flake and

flour. The Government witnesses whom our opponent cites had no trade knowledge of this third form, and did not testify that the term "tapioca" excluded it, but merely that *they only knew* tapioca in the pearl and flake forms. In the *Townsend* case the commercial testimony was competent, ample, and unanimous in proving the triple meaning as prevailing in trade. On the Western evidence alone the circuit judge found as a conclusion of fact (Record page 12, V.) that "in the general importing markets of the United States * * * the term 'tapioca' includes that article in three forms, viz: flake tapioca, pearl tapioca and tapioca flour." And the appellate court (Record page 177) confirmed this finding. Our opponent assumes a hopeless task in asking this court to reverse it.

IV.

The experiments of many witnesses,—expert laundrymen,—showed from the employment of tapioca flour in the place of starch, results so poor as to demonstrate its unfitness. Our opponent contends that this was because of *want of experience* in so employing this substance. Perhaps true, but the important point is that although thirty-one witnesses were called, none could be found who had experience of this sort. This is because, as also amply proven otherwise, *practically no one but the Chinese uses tapioca flour as starch.*

In the *Townsend* case Mr. Duryea (President of the National Starch Co.) testified that in thirty-seven years' practice of making and selling starch from "generally the range of substances out of which starch is manufactured", he had never used tapioca flour, was not familiar with it, and *knew nothing about it.*

V.

As to the assertion that the article in controversy is not scientifically a flour, and that it is not edible; the first proposition is completely irrelevant, and the second is at variance with the stipulations and proofs. At page 18, Record, it is stipulated that the merchandise in suit is the same as that involved in various decisions of the courts, general appraisers and treasury department, during the last twenty-five years. The substance covered by these decisions *was* tapioca flour, and *was* edible. The circuit court (Record page 12, V.) and the circuit court of appeals (Record page 177, fol. 261) both found as fact that this substance is commercially known as "tapioca flour". The appellate court in the *Townsend* case found the same fact. The stipulation on page 17, Record (IV.) agrees that it is used for food purposes. And ample testimony in the *Townsend* case proved that it was so used in pastry or puddings, in candy, in soups and in ice-creams.

The right of this substance to free entry does not depend on its being scientifically a flour; the free list does not provide for tapioca flour *eo nomine*; and the only relation between *flour* and the question at issue is that the proofs, stipulations and findings all show a substance called "tapioca flour" to be one of the forms of commercial "tapioca", and that the substance in controversy is the so-called "tapioca flour".

Under a provision for free entry of sulphur or emery, it would be useless to dispute the right of substances commercially designated "flour sulphur" and "flour emery" to such free entry, on the ground that they were not glutinous and sugary enough to be true flours, and equally idle to point out that they were inedible.

VI.

That the rule of commercial designation has no application to this case (pp. 11-12).

This court has held, in

Robertson vs. Salomon, 130 U. S. 412

that the "commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of the tariff laws". That was a case where the article in controversy was beans, and the tariff provisions under discussion were for "vegetables" and "seeds".

Bogle vs. Magone, 152 U. S. 623, involved the question whether "sauces" was a tariff term subject to the rule of commercial designation, and the court said that fish pastes were not necessarily sauces of any kind; "still less, that this is so clear as to exclude the usual test of commercial designation."

The circuit court, sustaining the importer (Record page 12, V.) and the appellate court, overruling him (Record page 177 fol. 261) both decided that the substance in suit was an established member of the class or group known to trade and commerce under the name "tapioca." The *Townsend* case separately and amply establishes the same fact, hence it seems a waste of time to dispute in this court either the relevancy of the rule or that the substance at bar is well within it on the proofs.

The fact that on the Pacific coast the term "China starch" obtains, is absolutely unimportant. If conceded, it constitutes just such a local and partial exception to a definite and general commercial designation, as this court has held incompetent to affect the tariff character of merchandise.

VII.

Our opponent says the tariff test of use is of all tariff tests the most difficult to apply. In this we agree, and the fact renders the free-list designation of tapioca and cassava the more clearly controlling as specifying the substance in controversy without doubt or difficulty.

If chief use means (as here asserted) the only profitable or practical use,—for which assertion we know no authority,—the chief use of tapioca flour is not as starch.

Fitness for use is completely negatived by the record. Many witnesses testified expertly that it was not fit; no witness who had tried it testified clearly that it was fit, and the examples illustrating its use proved its unfitness more clearly than words. The circuit court found (Record page 15 folio 22) that it is "physically" fit, but seems rather to have intended "scientifically" or "abstractly" fit, for the opinion at once discriminates from the practical fitness indicated by common use. The conclusion of the appellate court as to its fitness is vitiated by the misconception that the uses throughout the country for bookbinding, calico printing and the like, were starch uses and had been stipulated to be such; a fallacy which we have already cleared away.

The assertion that the substance is "chiefly used by the Chinese for laundry purposes", must mean: chiefly used, *so far as the Chinese are concerned*, for laundry purposes. The food use is established by stipulation, as already pointed out, and the whole tenor of the record, here as well as in the *Turnsund* case, shows that the preponderant use is not by the Chinese at all, but by the interests and for the purposes specified in the agreed fact V.

The assertion of the appellate court that one general use is as an "adulterant in the manufacture of

candies and other articles" is another of those mistakes which have crept into the record of the case, nothing in testimony or stipulation giving any foundation for it. It is amply proved that it is used as a food, or as an ingredient in food, but neither proved nor implied that it is so used as an adulterant.

VIII.

That the meaning of "starch" in the tariff phrase "fit for use as starch", depends on that of the verb "to starch" (pp. 15-16), is not only fallacious, but the proof lies in the very definitions of the verb cited by our opponent, each of which refers directly to the noun "starch". The importance of this is that *to stiffen* is not necessarily *to starch*. *Starching* is stiffening *with starch*; stiffening with anything else, as glue, sizing, flour paste, albumen,—is not starching, and so far as the uses of tapioca flour are for stiffening (which chiefly they are not) they are no more starch uses than are the like uses of glue, etc.

IX.

That the decisions rendered prior to 1890 had characterized tapioca as a "root flour" for tariff purposes (pp. 18-20). This involves complete misconception of these rulings, to which we invite attention.

Treasury decision 3161 (of 1877) distinctly held it free as tapioca.

Treasury decision 5802 (of 1883) held both the free list provisions for root flour and for tapioca applicable.

Treasury decision 7971 (of 1887) held it free as tapioca and not as root flour.

Treasury decision 9031 (of 1888) took the same ground, despite the importer's claim that it was a root flour.

The case of *Chung Yune vs. Kelly*, 14 Federal Reporter, 639 (decided in 1882) is wrongly analyzed by our opponent (page 18). The importation there involved was made in 1879, and protest, appeal and complaint in the action all claimed free entry for the merchandise as *sago flour*. The court overruled this claim *because the substance proved not to be sago flour*, and the importer must recover under his protest if at all. "Therefore", said the court, "it is of no avail to the plaintiff in this action that it now appears that this article is not dutiable, and ought not to have been charged with duty, because root flour, tapioca and cassava are all on the free list as well as sago". The case involved not only the provision for free entry of root flour in the Act of 1872, cited by our opponent, but also that for the free entry of tapioca and cassava in the Act of July 14, 1870 (16 Stats. 265-268).

The decisions since 1890 (referred to on our opponent's page 19) are inconclusive. No. 10277 merely cautioned collectors against passing free, as tapioca, sago, etc., substances not in fact such. No. 10613 did not relate to tapioca flour at all, but to sago flour, and directed that the starch duty should be assessed, "leaving the importers, if dissatisfied, to their remedy under Section 14 of the Act of June 10, 1890". No. 10954 was a ruling of the general appraisers, and on an entirely different substance from tapioca flour, viz: arrowroot. No. 11406 (G. A. 689), which our opponent thinks it worth while to cite to this court, is the decision of the general appraisers which was reversed by the circuit court of appeals in the *Townsend* case, the Townsend protest being decided by the board on the authority of G. A. 689 and the evidence taken in connection therewith. The other decisions of the

board, prior to the final decision of the Townsend case, are clearly unimportant, and we must challenge our opponent's assertion that any of them "were acquiesced in by the importers".

X.

That the McKinley act (of 1890) "struck down the argument based on Departmental construction" (p. 18). This *ipse dixit* logically results from the utter misconception of the settled status of tapioca flour in the contemporary practice of the preceding twenty years. Since, as we have demonstrated, the article was never characterized as root flour, but always as tapioca, cassava or cassady, it follows that the McKinley act, by renewing the provision for free entry of these, sustained, instead of striking down, the argument based on previous construction.

As to the starch paragraph in this act, it was neither strengthened nor broadened, but instead of abstract provisions for several kinds of starch and "other starch", which might have been considered as including all substances chemically starches, the new act prescribed new limits of practical fitness. It was a narrowing change, whose proper effect was to remove all danger of the assessment of starch duties on substances elsewhere specially named, merely because chemically they belonged to the vast genus of starch.

XI.

The reference to the report of a Government chemist at the Port of New York (p. 21). We are surprised that our opponent cares to direct attention to this impertinent document, wherein a subordinate officer of the Government assumes to criticize the proceedings of court and counsel in the *Townsend* case. The same officer had in fact testified in that case, and participated in the classification of Townsend's goods as starch. On the adequacy of the evidence in the Townsend case, this court will be able to form its own conclusions unaided by the Government chemist at New York, since the Townsend record is here, and as the President of the National Starch Co. there testified that in his experience of many years of making and selling all kinds of starch throughout the country, he had never come in contact with tapioca and knew nothing about it, it seems clear that if the court was misled in that case, it was because this witness knew less about the practical aspects of the starch business than did the Government chemist at New York.

XII.

That there is nothing to show that the Chinese laundry use does not prevail in such laundries over the entire country, and that it is commonly so used (p. 22). Our opponent himself, on his page 4, quotes from the stipulation as to the facts: "That the article is fit for use as starch in the sense that by its use clothes may be starched, but it is not commonly used in laundry work as starch throughout the United

States, and is not known to be so used except on the Pacific coast".

Even were it so used generally by Chinese throughout the country, that use would still be exceptional as being confined to a limited, peculiar and unrepresentative class in the community, whose practices cannot possibly be supposed to have been contemplated by congress in legislating for articles according to their use or fitness for use.

XIII.

The Magone vs. Heller case is no authority for our opponent, but is in our favor. Its entire force was focused on the phrase "expressly used". Remove the word "expressly", thus making the provision in question parallel to that for starch, and it is inconceivable that the court would have decided as it did. Add the word "expressly" to the starch provision, and it becomes immediately manifest that tapioca flour is thereby excluded. We take direct issue with our opponent's assertion that "the phrase 'fit for use' is as sharply definitive as to plain intent as 'expressly used.'"

XIV.

If the purpose of paragraph 730 and similar paragraphs of the McKinley act seems clear to our opponent as being to admit free "specified forms of food," not only does that seem less clear to us, but we invite him to reconcile that intent with the express provisions

for free entry of cassava, the name of nothing but the merchandise in controversy, which he says is not edible, and sago, as distinguished from sago flour (695) the flour being the only known edible.

XV.

The argument based on prices (p. 23) seems completely misconceived. For many years prior to 1890, tapioca flour was uniformly admitted free, and during all that time its cost on our markets was less than those of starches generally. Since 1890 the practice has fluctuated, duty being sometimes exacted and sometimes not, and naturally the price has accordingly fluctuated, and sometimes equalled that of the starches. The proofs showed and the courts found that prior to 1890, when uniformly cheaper, the article was never habitually used as starch nor came into competition with starches. Of course nothing is taken from the strength of this demonstration by the fact that at a later period, when also it was not a competitor of starches, its price may have been no cheaper than theirs.

No other arguments appear to be advanced in the Government brief.

ALBERT COMSTOCK,
Aldis ~~██████~~ B. BROWNE,
 CHARLES PAGE,
 Counsel for Petitioner.

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In the Supreme Court of the United States.

OCTOBER TERM, 1899.

CHEW HING LUNG & Co., PETITIONERS,	}	No. 36.
<i>v.</i>		
JOHN H. WISE, COLLECTOR OF CUSTOMS for the port of San Francisco.		

*ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.*

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case is concerned with the rate of duty to be assessed under the tariff act of 1890 upon an importation of merchandise in November, 1893, described in the invoice and entry as "sago flour." The entry was classified by the collector as *starch*, dutiable at 2 cents per pound under said act, and liquidated accordingly. The importers, being dissatisfied, duly proceeded by protest under

the act of June 10, 1890, claiming that the merchandise was not dutiable at 2 cents per pound under paragraph 323 of the McKinley Act as claimed by the collector, but was free, either as *tapioca* under paragraph 730, or as *sago flour* under paragraph 695; or else was dutiable at one-fourth of a cent per pound as *rice flour* under paragraph 261, or at 20 per cent ad valorem under section 4 of the act. Whereupon, the Board of General Appraisers, passing variously upon other entries of similar but not the same merchandise (dependent by agreement without separate determination on the present issue), held that the merchandise herein involved was exempt from duty under paragraph 695, and overruled the collector's classification (Rec., p. 10).

The paragraphs in question are as follows:

261. Rice, cleaned, two cents per pound; uncleaned rice, one and one-quarter cents per pound; paddy, three-quarters of one cent per pound; rice flour, rice meal, and rice, broken, which will pass through a sieve known commercially as number twelve wire sieve, one-fourth of one cent per pound.

323. *Starch, including all preparations, from whatever substance produced, fit for use as starch, two cents per pound.*

695. Sago, crude, and sago flour.

730. *Tapioca, cassava or cassady.*

Sec. 4. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this act, a duty of ten per centum ad valorem; and on all articles manufactured, in whole or in part, not provided for in this act, a duty of twenty per centum ad valorem.

Upon review in the circuit court the court found the following facts (Rec., pp. 11-12), substantially embodying a stipulation as to the facts agreed upon by the parties:

That the merchandise, although entered by importers under various names, is all the same substance, namely, starch grains derived from the root botanically known as the manihot, known also as cassava or manioc; that of the two prevailing varieties of the root both contain a large proportion of starch, and the starchy substance constituting the importation consists of starch grains obtained from the root by washing, scraping, and grating into a pulp from which the grains settle, and after the juice is decanted a deposit of powder is left, which, being repeatedly washed with cold water and then dried, is nearly pure starch and is insoluble in cold water. This is the substance before the court. That if sufficient heat and motion are afterwards supplied to this substance, a mechanical change takes place by which the grains become fractured and are agglutinated. This further derived substance is partly soluble in cold water and is granulated tapioca, known as pearl and flake tapioca in commerce. That the importations [which at San Francisco are solely by Chinese] were made chiefly for the purpose of supplying Chinese laundrymen, who use it as starch, and to a slight extent for food; but that these uses are limited to the Chinese, except that there is a local use, in some instances, by white laundrymen in San Francisco, for starch purposes, by mixing with wheat or corn starch, which, with potato starch, are the starches

commonly used in the United States. That among the white people dealing with Chinese on the Pacific coast the substance is commonly known as Chinese starch [and it is commercially known in the general importing markets of the United States as tapioca flour, in which markets the term "tapioca" includes the crude forms, flake tapioca, pearl tapioca, and tapioca flour. That at the time of this importation, when the duty of 2 cents a pound was imposed, and since, the cost of the substance has been about the same as that of ordinary starches, and that, previous to the imposition of this duty, when it was admitted free, the cost was less by the amount of the duty than at the time of the importation. That the article is fit for use as starch in the sense that by its use clothes may be starched, but it is not commonly used in laundry work as starch throughout the United States, and is not known to be so used except on the Pacific coast]. That the substance is imported from China and used in Eastern States for starch purposes by calico printers and carpet manufacturers to thicken colors [for bookbinding, in the manufacture of paper, filling in painting, and as an adulterant in the manufacture of candy and other articles] and in manufacture as a substitute for gum arabic and other gums.

The stipulation as to facts was the same as the court's finding, omitting that portion in brackets, except that the stipulation added that the substance is also sometimes used for sizing cotton goods. A stipulation as to evidence (Rec., p. 18) agreed that the merchandise involved is the same as that involved in certain cited decisions and

rulings, and that reference may be made to the same upon the trial or argument as fully as if they formed part of the evidence herein.

Certain testimony was taken before one of the general appraisers acting as referee, and thereupon the circuit court affirmed the decision of the Board of General Appraisers, because of the doubt as to the meaning of the term tapioca and the phrase "preparations fit for use as starch," and in deference to the decision in the case of *in re Townsend*, 56 Fed. Rep., 222 (Rec., pp. 14, 15). Upon appeal by the collector to the circuit court of appeals, under assignment of errors set forth at p. 173 of the record, that court, stating the facts as found by the circuit court, held (Rec., pp. 176-181) that the fitness of root flour included within the term "tapioca," as understood in the trade of the United States for use as starch in laundry work, as well as in the arts and manufactures, is clearly shown by the evidence and findings in the circuit court, and that by the phrase "all preparations from whatsoever substance produced fit for use as starch," Congress intended to add to the protection of American starches and to make all root flour fit for the prescribed use, from whatever root produced and under whatever generic name known, pay duty at the prescribed rate; and that there is nothing to the contrary in the case of *in re Townsend*, where the Government's case was ended by the failure to make it appear that the article in question was in fact fit for use as starch; and thereupon the appellate court reversed the judgment below and remanded the cause with directions to enter judgment upon the finding in according with the collector's petition for review.

The case now comes to this court upon writ of certiorari granted on the importer's application, the Government not opposing.

THE TESTIMONY.

The Government witnesses (pp. 19-109) were twenty-two in number, and were wholesale grocers, or buyers or managers for wholesale grocers and importers, customs officials, laundrymen, or engaged in other businesses and in professions. It appeared that none of the importers called imported the substance in controversy themselves. The Government witnesses testified in accordance with the agreed-on facts of the stipulation, and upon the disputed issues, that the term "tapioca" embraces commercially no other article than pearl and flake tapioca, and that they did not know any article termed commercially tapioca flour (pp. 20, 22, 24, 25, 31, 36, 44, 46, 70, 72, 85, 101, 108, 112). The testimony was conflicting as to whether market reports of the world in general and those of the United States divided the general heading "tapioca" into "flake, pearl, flour" (pp. 28, 36, 40, 87, 90, 99). Testimony of laundrymen was to the effect that they used the China starch mixed with other starches, and that, because of not being accustomed to the starch, it sometimes did not turn out such good work as ordinary starches. Other and higher priced starches also would not at times turn out good work (pp. 80-82, 93), and one witness testified that a municipal institution of San Francisco bought the starch for the purpose of starching clothes (p. 31). On the question of commercial designation,

one of the Government witnesses (p. 47) testified that if asked for tapioca flour he would give the substance in question, and was thereupon alleged by the importer's counsel to have proved the commercial designation (and see p. 86); but he further testified that, nevertheless, the substance was more a starch than a flour, and that he did not intend to convey the impression that a dealer in tapioca would have to specify further than "pearl" or "flake." The examiner of the port (p. 48) testified that he knew the substance as starch; that it is invoiced as sago flour, formerly as root flour, very seldom as tapioca flour; and the adjuster states that various terms are recklessly used by the Chinese in their invoices, and that the article is "loosely called" (pp. 95, 96; see also importers' testimony, p. 163). The examiner of drugs testified that the article is not by scientific analysis a true flour, lacking gluten, the fibrous matters, the sugar, and some other similar ingredients (p. 52), and that (pp. 56-58) the additional process producing "flake" has changed some of the starch to gum, and therefore powdered "flake" would not be the same as Chinese starch or tapioca flour (see also pp. 60-65, 104, 105). A Government witness (pp. 108-9) testified that the difference between ordinary flour and powdered starch can be told by the sense of touch. The chemist, Price, testified from his practical knowledge, as well as from chemical analysis and microscopic examination, that, excepting one sample marked "rice flour," all samples of the various substances in controversy were starch and not flour, and came within the former designation; and that there is the same relative distinction between flour

and starches from cereals and roots, respectively ; and that cassava meal, which is the root merely dried and pulverized, corresponds to flour from wheat, but that either substance further treated produces starch [in the case of cassava, Chinese starch, or the "tapioca flour," so called], the only difference being that the cassava root contains a greater proportion of starch than the wheat (pp. 62, 63). In the same line the witness Frese (p. 98) considers the article in controversy as not tapioca flour [in the general sense], but rather as a product of the same. The Government chemist also testified, from a practical experiment, that the tapioca flour was not useful for edible purposes, and was only fit for starch (pp. 68-9). An importer (p. 97) states that he knows that "tapioca flour" is imported into New York from manifests seen in Singapore," and for the purpose principally of starch substitute for textiles—that is, "for sizing goods."

The importers called nine witnesses, who were importers or their managers or brokers in the import trade, a chemist, and a manager of a laundry machinery factory. The testimony was to the effect that all tapioca is divided into three classifications in foreign prices current, notably those of Singapore, viz, flake, pearl and flour—and that there is no difference as to this commercial classification between the United States and the commercial world (pp. 110, 111, 120, 126, 148, 154, 159, 161); that the largest portion of the importations at ports of the Eastern States is used for sizing by print manufacturers (p. 111); that ordinarily tapioca comes in marked "sago" (which properly is the product of the sago palm, not of the cassava root), though not at San Francisco, where the pack-

ages of tapioca are received with distinguishing marks to segregate the different varieties (p. 112); but this witness said later that his firm did not import or sell tapioca flour to any extent (p. 114). Another witness, who included flour in the term tapioca (p. 120), showed that his statement that he imported it only for food purposes (p. 122) was restricted to pearl and flake tapioca by further testifying (123) that he had never imported a substance known as tapioca flour. A witness, who testified that he knew of no other designation for the article spoken of as tapioca flour, either here or abroad, than tapioca, and to the question whether he had heard or read of any market reports of an article designated as China starch, replied that the only way he could answer the question was by stating that he had never seen a quotation for China starch, also testified that he had never handled the article in any form which he termed tapioca flour, and had never imported it himself, having imported only the pearl and flake tapiocas for culinary purposes (pp. 126-7).

The expert testimony on the importers' behalf (pp. 127-147, 169) shows that from laboratory experiment tapioca starch requires more boiling to fit it for laundry purposes, and probably after the same period of boiling contained more unruptured starch cells than wheat or corn laundry starch, and was somewhat less white, smooth, and free from odor (pp. 132, 133); that flour chemically is anything which is finely enough powdered, and that tapioca in none of its forms contains gluten, nor does potato flour nor flours from several other substances (p. 133); that the article in question is fit for use and is used

for food purposes, but that flake and seed [or pearl] tapioca by heat decomposition has been changed in form and becomes globular and glutinous. On cross-examination it was shown by this witness that many ingredients, such as are contained in flour from cereals and of glutinous origin, and in the dry powdered cassava root, such as gluten, ash, oils, albuminoids, and sugar disappear in the washing process and are not present in the respective starches (pp. 137-140), and the witness then states that he does not know positively that there is no gluten in cassava root (its presence being shown by an expert analysis before the court and the witness), because he himself had never analyzed it (p. 140), and that in the same sense—as far as form and consistency are concerned—he would call the starchy product from wheat a flour (p. 141). This witness knew nothing of the commercial designation of the substance and derived his testimony from mechanical and microscopical examination, which showed that the substance contained no other element than starch; he also testified that the purer starch is the better it is for laundry purposes, and that it is at its greatest value for laundry purposes in the form in question; that there is a difference in globules, but not chemically, between the substance and arrowroot, which is largely used as food for the sick (pp. 141, 142).

An agent for certain laundry machinery, who knew nothing of the substance, inferred and supposed it would not work well on the heated rollers of ironing machines (p. 152). A merchandise broker stated that it was not easy to tell the article from the sample; that it is not known by any other name than tapioca flour, as far as

eastern markets are concerned, but is brought into San Francisco market as China starch (pp. 155, 156); that except experimentally he did not know of any importations other than those by Chinese importers, and that Chinese import the article principally for laundry purposes (pp. 156-7). Several witnesses would call any powdered substance of the tapioca plant tapioca flour (pp. 157, 162).

ARGUMENT.

The argument falls under three heads—commercial designation, use and the statutory language, and the decisions and Treasury rulings.

I.

The question of commercial designation.

This doctrine has in truth no application to the case. The importers did not at all prove the designation as tapioca or tapioca flour; they merely showed that the article is a flour (in the general sense)—that is, a powdered and refined substance made out of the cassava root—and that it is imported in greater or less quantities, and that importations in the Eastern States are used for stiffening and starching purposes. It was, on the other hand, clearly shown that it is not a flour at all, lacking the glutinous and other properties and ingredients which distinguish true flours, and that it is, in fact, both as regards form and properties, a true and substantially pure starch, which the food tapiocas are not, because by mechanical change a portion of the starch properties have been

transformed into gum or dextrin. Some of the witnesses, relying on foreign price lists (in fact, on those of one port, Singapore, from which port alone it appears that all the importations are made), contended for a foreign designation as tapioca flour, and merely alleged the same domestic designation. But even the foreign designation was confined to one point or locality, and was not shown to be uniform, general, and definite, and all such testimony was received under the objection of the Government that a foreign designation is not competent to affect tariff classification. And further, although the importers' witnesses called the article a flour in the general physical sense that it is a powdered substance, it was abundantly shown by them that it is wholly and essentially a true starch; that flours of cereal and albuminous origin contain elements such as gluten, sugar, and albuminoids, which they lose when turned into starch, just as the cassava root does; and that, allowing for the different character and amount of hulls or fibers and other ingredients in cereal or albuminous flours and in dry powdered cassava root, respectively, the latter and not the powdered starch stage thereof is the corresponding flour stage of the cassava; and the starch from wheat, for example, and not wheat flour, is analogous to the so-called tapioca flour.

It must, of course, be conceded that commercial designation does not serve the Government either, although its case is stronger thereon. Such importations as the one in question appear to have been made not only at San Francisco but at the other Pacific coast ports, and

it is to be fairly presumed wherever on the coast the Chinese trade was served that the appellation "China starch" obtained, and that it was not restricted to San Francisco alone; and the true nature of the article as chemically and practically pure starch fortifies the argument as to the Government claim of commercial designation. Nevertheless that designation did not appear to meet the test of generality, uniformity, and definiteness required by the decisions of this court.

II.

Use and the language of the act.

(A) *Chief use.* The intention and effort in tariff acts is to name or characterize dutiable articles of merchandise or those entitled to free entry so accurately that there shall be as few questions of doubtful classification as possible. Consequently, the art of statutory expression, guided by intervening decisions, has been matter of constant evolution, so that especially under the last four tariff acts certain phrases and tests in description have become quite uniform and identical in their meaning. Besides the limitation *eo nomine* and by the common or commercial designation, there are scientific tests, as that of the polariscope, or by specific gravity; tests of substitutionary or imitative character; determinations as to a product or fabric by weight, value, capacity, or percentage of some component part, and among remaining instances there is the specification by the state of crudeness or of preparation or advancement of the article, and by the purpose or method

of importation. One of the most significant tests, and the one perhaps most difficult to settle, is that of use, including purpose and fitness. The general phrases are, "used for," "used as," "used in." The particular phrases are, "used expressly for" or "exclusively for." Exclusive use admits of no doubt. The word "used," without qualification, has been held by the decisions to refer to the customary or usual use and not to the actual use which can not be definitely established, and has been defined to be in effect the greatest single use or predominating use; that is, the use which, in the absence of more definitive language like *exclusive* or *express*, will control. Whereas express use is determined in the recent well-known use cases to mean used particularly or especially, and chief use by those cases is now fixed as the only common, practical, general, and profitable use.

We shall show, we think, that the substance claimed to be dutiable as starch stands the test of the chief-use decisions; but at the outset we desire to emphasize the fact that the phrase, "all preparations, from whatever substance produced, fit for use as starch," is a very broad term; that it not only has no limitation as express or exclusive, but is not properly embraced by the decisions as to chief use, the only requirement being that the substance, whatever its origin and nature, shall be *fit for use* as starch.

Now, it was shown that the article was chiefly used by the Chinese for laundry purposes. Other uses by Chinamen to a limited extent were alleged, but nothing clear or definite on that subject was shown. It was claimed that, being ideally a starch, it was fit for food

use as well as any other starch; but it is well known that the ordinary domestic food starches are not replaced as food by the closely similar laundry starches of the same origin. The only practical experiment on this subject (under the direction of the Government chemist) demonstrated that whatever the purity of the article, and even allowing its ideal fitness for food, practically it could not be used for food purposes. He was very certain that it is not so used. (Rec., p. 68.) Further, it appears that white laundrymen use it in their trade by mixing with corn and wheat starches, and it was furnished to a children's hospital in San Francisco for laundry use, apparently without such mixing. As to the other uses, the bulk of importations in the Eastern States is for sizing print cloths; that is, *stiffening* them. That is a starch use. The bookbinder's use would be the same. The use as a "food adulterant" was for *thickening* soups and by confectioners. The latter use is to give a gummy consistence. The food use merely means that the article is present in certain foods, or similar products which may in a certain sense be regarded as food. Candy, however, is not food, really and in common parlance. It is made of a valuable food component, sugar, but it is not food. There is no true food use, such as pearl and flake tapioca; in soups and candy the use is merely in connection with food, or the food use is secondary and incidental. The same idea runs through all the uses other than laundry use, viz, the starch idea, the stiffening idea. The phrase "use as starch" is equivalent to "use for starching purposes;" that is, the proper force of the term is to be derived from the participle "starching" of the verb "to

starch," expressing a mechanical process and effect, and not from the noun "starch," the name of a substance of various kinds and subject to wide chemical bearings and differentiation, although the variety before the court meets the strictest definition tests as to properties and chemical nature.

Now the verb "to starch" means to stiffen with starch (Webster); the Century Dictionary is the same; to apply starch to, to stiffen or treat with starch (Standard Dictionary); and the latter authority defines the archaic adjective starch as primarily stiff and rigid and derivatively prim or precise.

The starch use has certainly been shown to be the controlling use within the tests of this court as to chief use.

(B) *The language of the act.* This is, "all preparations, from whatever substance produced, fit for use as starch."

Even if it is conceded that the intentionally broad phrase "fit for use" means *practically* fit and not *ideally* fit, the facts sustain its application. The actual starch use in the eastern States is clear. The limited use in white laundries on the Pacific coast appears. The Chinese testimony was for obvious reasons not available. Chinese laundrymen were not in this proceeding interested to show the acceptable character of their work. Those white laundrymen or laundry machinery men who doubted the adaptability of the article for laundry work did so hesitatingly, and their doubt was not based on any knowledge. Some sporadic domestic experiments (to supply evidence) were made in unfamiliarity of the

proper use of this particular starch (pp. 134-135), and besides the witness's faulty recollection of the original condition of the results, the laundried articles were produced long afterwards and were naturally yellowed by time.

But the phrase itself in its broad language, meaning, and intent merits attention. The language is "all preparations, from whatever substance produced, fit for use as starch." When the natural import of this language is considered, and its evident purposes connected with previous legislation and rulings thereon (which will be considered, *infra*) kept in view, it is difficult to understand how this substance or any similar substance can elude its provisions. It does not seem necessary to dwell further upon such a plain proposition.

III.

Decisions and rulings.

These are, in brief, as follows (Rec., p. 18), reviewing them in the light of prior laws: In the evolution of starch and tapioca tariff provisions, which, by the act of 1846 (9 Stat., 47) were both dutiable at 20 per cent (unchanged by the act of 1857, 11 Stat., 192), and by the act of 1861 (12 Stat., 188, 190) were changed by the reduction of the duty on tapioca to 10 per cent *ad valorem*, we find the provision for tapioca, cassava, or cassady in the act of 1870 (16 Stat., 256), which placed the substance *eo nomine* on the free list, which was continued by the act of 1883 (22 Stat., 521); and the latter act followed the act of 1864 (13 Stat., 266) in differentiating

at varying rates of duty starches made from certain other materials than tapioca. The act of 1883 also provided that arrowroot and root flour should be free (22 Stat., 503, 517, 520).

Now, up to this point in legislation the Treasury rulings were: No. 3161, in 1877, holding that tapioca flour was to be admitted free as one of the three forms of tapioca here alleged; No. 5802, in 1883, proceeded on the same ground and on the additional ground that root flour, being now free under the act of 1883, flour made from cassada root is included. No. 7971, in 1887, followed the preceding decision, and No. 9031, in 1888, followed the two preceding tests as to "root flour, tapioca, * * * though intended for use as starch," although the United States chemist found the substance to be "tapioca starch;" but the importers relied on the then existing free provisions for root flour and did not claim on "tapioca."

While the Department was thus ruling under the prior statutes, the case of *Chung Yune v. Kelly* (14 Fed. Rep., 639) was decided, in 1882, Judge Deadly holding that "*flour from the cassava root or 'cassava meal' from which is made the tapioca of commerce*" was root flour, free under the relative paragraph in the act of 1872 (17 Stat., 236), and excluded from the starch paragraph (as it then existed) *eo nomine*. Tapioca was not on the free list of that act. The McKinley Act changed all this and struck down the argument based on departmental construction, for it not only omitted the paragraph admitting root flour free (leaving *cjus generis* only raw or unmanufactured arrowroot to come in free, par. 488), but it changed and

strengthened the starch paragraph materially by adopting the language, "starch and all preparations from whatever substance produced fit for use as starch," so that it can not be claimed by the importers that substances having been known as root flour under previous acts can not now be included in the starch paragraph of the act of 1890 although the free-entry provisions for root flours are dropped in that act, because the language of the starch paragraph in the act was so changed from that of previous provisions as to include clearly what was formerly separately provided for, viz, the flour of the root tapioca or cassava or of any root fit for use as starch.

Upon the adoption of the McKinley Act the Treasury rulings immediately changed in conformity thereto, and decision No. 10277 in October, 1890, held that if the glutinous and albuminous substances have been eliminated from the so-called flour, so that the article is practically starch, it must be so classified. To the same effect are Nos. 10613 and 10954, and G. A. 689. In the latter decision the board discussed the matter at length, and considered that Congress meant, in striking root flour from, and leaving tapioca in, the free list—as root flour embraces all flour from the root, tapioca as well—that tapioca flour was excluded from free entry and pearl and flake tapioca continued free; for, they say, "it is in evidence * * * that the tapioca of commerce is in the form of granules * * * and designed for culinary purposes, while tapioca flour is not fit for culinary purposes, but is fit for starch. It hence seems plain that Congress intended to admit the tapioca of commerce for culinary purposes free of duty, but to impose a duty of 2 cents a pound on

such tapioca flour as is designed for use in the arts." This was followed in G. A. 752, 1041, 1930, and 1969. The only exceptions are G. A. 504 and 2701, in which certain sago flour or sago proved to be a flour was held not to be fit for nor dutiable as starch. Finally, Treasury decision No. 14114 declares that the decision in *In re Townsend* (56 Fed. Rep., 222), which was decided in 1893, is binding upon the Department, and it was in consequence of this decision also that the ruling of the board was changed as rendered in this case. But up to that time the board's decisions on the subject under the act of 1890 were logical and uniform, and were acquiesced in by the importers.

This leads us to the consideration of the Townsend case. The court there found as facts from the evidence—not binding here, for the evidence differs—that the article in controversy was commercially known as tapioca; was not known as starch or as a substitute therefor, had never been sold as starch, was not considered as adapted to the ordinary purposes of starch, was not a preparation actually fit for use as starch, and was cheaper than ordinary starch. All of these facts are disputed, and substantially without contradiction, by the evidence and stipulation as well as the findings of the court in this case, except the finding that tapioca flour is commercially known as tapioca, and upon this latter finding there is an unmistakable preponderance of testimony in our favor that tapioca commercially embraces only pearl and flake tapioca, the edible product. Indeed, we might safely rest our case on this point upon the construction by Judge Deady in the case of *Chung Yune v. Kelly*, *ante*, to the effect that tapioca flour is a root flour and is not tapioca, and upon

the uniform decisions of the Board of Appraisers rendered before the Townsend Case was decided, which are more cogent than the ambiguous rulings of the Treasury Department under the earlier acts.

The court is respectfully referred to the report of the Government chemist at the port of New York (Rec., pp. 8, 9), by which it is demonstrated how poorly equipped with evidence the circuit court of appeals was in the Townsend Case for its adjudication upon the substance. The report says: "The court had no commercial evidence before it that the preponderant use of the article was its employment as starch. * * * The court was misled through the insufficiency of testimony." * * * The report differentiates this substance from tapioca, stating that one was starch and prepared for use as such, while the other, the tapioca in the form of flakes, is especially prepared for culinary purposes. Upon the authority of the Townsend case it is only necessary to state the established principle, that a rule of law laid down by the court is only applicable to the particular facts before the court. The reasoning of that case regarding the difference in evidence sustains our contentions here, because the language is: "The decision of the appeal turns upon the question whether under the testimony tapioca flour can be considered as a preparation fit for use as starch." If the case at bar were dependent upon that fact alone, it has been conclusively established in our favor. Again, the court say: "If tapioca flour was * * * a preparation fit for use as starch, the question would have arisen whether it was specially provided for under paragraph 323." * * * Such a question is here pre-

sented, since we have established the fact that the preparation is fit for use as starch, not only upon the evidence, but because of the authorities here cited, which do not seem to have been invoked in the Townsend Case, holding tapioca flour to be a root flour commercially rather than a tapioca.

This leads us again to the main question under another aspect, viz, Is tapioca flour specifically provided for under paragraph 323? There can be no doubt that it is. Taking the narrowest sense of the term of "starch," it is known commercially, at least on the Pacific coast, as starch, and is imported and used for laundry purposes, and there is nothing to show that the Chinese laundry use does not prevail in such laundries over the entire country. It is fit for such use and is commonly so used; and, taking the broader meaning of the term as to which, in addition to the argument herein made, Judge Deady in the Chung Yune Case says that starch "used in the arts as *sizing or stiffening* and not food, is the starch of commerce," this use and fitness as starch have been fully shown by the importers themselves. Further, conceding to the argument that the substance is known commercially to our tariff laws as tapioca flour, the provision for starch is more specific, for under the doctrine of *Magone v. Heller* (150 U. S., 70), in which the contest was between the description *co nomine* sulphate of potash and "substances expressly used for manure," it was held that the agricultural use must prevail over the scientific or commercial nomenclature, even where the name of the article appears in the schedule. In such a case the more general clause governs the more special clause, and in a case giving effect to a

specific designation over a general one the qualification is laid down that the instance must be such that the specific language can be applied to nothing else except the article in question. (*Arthur v. Stephani*, 96 U. S., 125.) But here, continuing the concession *pro argumento*, the appellation "tapioca" is certainly applied specifically and more commonly to the pearl and flake tapioca used for culinary purposes; and in addition, recurring to *Magone v. Heller*, the present case is stronger, for the phrase "fit for use" is as sharply definitive as to plain intent as "expressly used," and tapioca flour is not provided for *eo nomine*, and therefore that portion of tapioca, viz, tapioca flour fit for use as starch, is more specifically differentiated and provided for in the starch paragraph. But we wish to emphasize the fact that the importers have not shown that tapioca flour is commercially known as tapioca. The evidence on that point rests largely on Singapore price lists, and when tested broke down.

Finally, on this point the clear purpose of the starch paragraph of the McKinley Act being to protect American manufacturers, and of the tapioca paragraph and of similar paragraphs to admit free specified forms of food not produced here, the importers must show a food use of tapioca, and they have not done so.

In the Townsend case the court advance an argument based upon relative prices, namely, that if the substance was fit for use as starch, its cheapness over ordinary starch would insure its use as such. This record shows that there have been at all times many fluctuations in the prices of different starches, owing to various causes. It also shows that ordinarily the article is more expensive than the common bulk starch used in trades and manu-

factures (Rec., pp. 37-38) and that, relative to the finer laundry starches, prices at different times have approached each other quite closely (pp. 81-84). The findings of the court say that previous to the act of 1890, when admitted free, the cost was less by the amount of the duty than at the time of the importations, when and since the cost has been substantially as great as that of ordinary starches, a little more than that of the cheapest and a little less than that of the best. As to fluctuations in the prices of tapiocas and domestic starches and their causes, see the record (pp. 38-84).

The corresponding language of the starch paragraph of the Wilson Act is "all preparations from whatever substance produced, *commonly used* as starch," and the language of the Dingley Act is the same as that of the act of 1890, the rate, however, being a half cent less per pound. It is unnecessary to add that neither act should be regarded in determining the question before the court.

In conclusion, we contend that the Government's position is borne out by the language of the act, and conforms to the rules of interpretation and the decisions; it is in accordance with the evident intention and purpose of Congress, as expressed by their language, and fulfills the well-known aim of protection to the American manufacturer, and should, we submit, prevail here.

We therefore respectfully submit that the judgment of the circuit court of appeals in this case should be affirmed, and the substance in controversy be declared dutiable under paragraph 323 of the tariff act of 1890 at the rate of 2 cents a pound.

HENRY M. HOYT,
Assistant Attorney-General.

Opinion of the Court.

CHEW HING LUNG v. WISE, COLLECTOR.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT.

No. 86. Argued December 11, 12, 1899. — Decided January 22, 1900.

Tapioca flour is not a preparation fit for use as starch, and under the tariff act of October 1, 1890, c. 1244, paragraph 720, is entitled to free entry. The designation of an article, *eo nomine*, either for duty or as exempt from duty, must prevail over words of a general description which might otherwise include the article specially designated.

THE statement of the case will be found in the opinion of the court.

Mr. A. B. Browne and *Mr. Albert Comstock* for Chew Hing Lung. *Mr. Charles Page* was on their brief.

Mr. Assistant Attorney General Hoyt for Wise and the United States.

MR. JUSTICE PECKHAM delivered the opinion of the court.

The question in this case, which comes before us on certiorari, is whether certain merchandise imported into this country is entitled to free entry or is subject to duty. The merchandise is claimed to be tapioca, and the question arises under the tariff act of October 1, 1890, c. 1244, 26 Stat. 567.

Paragraph 323 (page 588) of the statute reads as follows:

"323. Starch, including all preparations, from whatever substance produced, fit for use as starch, two cents per pound."

Paragraph 730 (page 610) of the "free list," reads as follows:

"730. Tapioca, cassava or cassady."

The government claims that the merchandise is a preparation fit for use as starch, and is therefore dutiable at two cents per pound under paragraph 323.

The importers contend that the substance imported by them

Opinion of the Court.

is tapioca, in the form of tapioca flour, which is one of the three forms of tapioca known to commerce, and is therefore entitled to free entry under paragraph 730.

The merchandise was imported in November, 1893, at the port of San Francisco, and the collector of that port imposed a duty of two cents per pound upon it. The importers, claiming that it was entitled to free entry, appealed to the board of general appraisers, and that board decided that the imported article was free of duty, and judgment to that effect was entered. Upon appeal by the collector to the Circuit Court of the United States, in the Ninth Circuit, Northern District of California, that court affirmed the decision of the board, 77 Fed. Rep. 734, and the collector then appealed to the Circuit Court of Appeals for the Ninth Circuit, where the judgment of the Circuit Court was reversed, 48 U. S. App. 517, and the cause remanded with directions to affirm the decision of the collector. Upon application by the importers this court granted a writ of certiorari, it being alleged that there were inconsistent decisions in the Circuit Courts of Appeals on this question.

Upon the trial of the case before the Circuit Court the parties agreed upon certain facts, and evidence was given in regard to the character of the substance imported and its fitness for use as starch, and the court found that the merchandise, though entered at the custom house at San Francisco by the importers under various names, such as tapioca, sago and root flour, is all the same substance, viz., the starch grains contained in and derived from the root botanically known as *jatropha manihot*. In the West Indies the root is known as cassava or manioc; in Brazil as mandioc; but all these names indicate the same thing, without change of condition or character.

There are two varieties of the root, one of which is very poisonous, and both varieties contain a large proportion of starch. The starchy substance constituting the importations involved in this controversy consists of the starch grains obtained from the manihot root by washing, scraping and grating, or disintegrating it into pulp, which in the poisonous

Opinion of the Court.

variety is submitted to pressure so as to separate therefrom the deleterious juices. The starch grains settle and the juice is subsequently decanted, leaving as a deposit a powder, which, after repeated washings with cold water and after being dried, is nearly pure starch, and is insoluble in cold water. This is the substance in controversy. If sufficient heat and motion are afterwards applied to this substance a mechanical change takes place, the grains become fractured and thereby agglutinated. The latter substance is partly soluble in cold water, and is the granulated tapioca known as "pearl" and "flake" tapioca of commerce.

The importations in question are from China, and are made chiefly for the purpose of supplying Chinese laundrymen, who use the flour as a starch and to a slight extent for food purposes. Its use for starch purposes in the laundry is, however, limited to the Chinese, except that in some instances in San Francisco it is so used in their business by white laundrymen by mixing it with wheat or corn starch. Wheat and corn and potato starch are the starches commonly used in the United States. Tapioca flour is also used in the Eastern States by calico printers and carpet manufacturers to thicken colors, and in the manufacture of a substitute for gum arabic and other gums. It is also sometimes used for sizing cotton goods, and in addition as an adulterant in the manufacture of candy and other articles.

Among the white people dealing with the Chinese on the Pacific coast the substance in question is commonly known as "Chinese starch." In the general importing markets of the United States it is commercially known as tapioca flour, and in those markets the term "tapioca" includes that article in three forms, viz., flake tapioca, pearl tapioca and tapioca flour. The substance in question is not imported into San Francisco by others than Chinese.

The Circuit Judge also found that the article in question is fit for use as starch in laundry work in the sense that by its use clothes can be starched, but it is not commonly used in such work as starch, throughout the United States, and is not known to be so used except on the Pacific coast. Judgment was therefore ordered for the importers.

Opinion of the Court.

These findings of facts were assumed by the Circuit Court of Appeals, and upon them that court based its judgment, reversing the Circuit Court and affirming the action of the collector.

Upon these facts we are to determine which paragraph in the tariff act is to govern. The findings of the courts below that the substance in question is included in the article of commerce known as tapioca, and is tapioca in one of its forms, would entitle it to free entry under paragraph 730, unless some other provision of the act nullifies that language. Paragraph 323 is relied on for that purpose. We think it does not have such effect. That paragraph is general in its nature, and provides for a duty upon starch, including in that name all preparations from whatever substance produced, fit for use as starch. Any preparation, therefore, which is fit for that use would come within that general designation. What is a preparation "fit for use as starch" is another question, but assuming tapioca flour to be thus fit, it would be subject to duty under that paragraph, if there were not another and different provision in the statute relative to that same substance.

When we come to look at the free list in the same statute we find that tapioca is to be admitted free, and the finding of the court is that tapioca flour is one of the three forms of what is commercially known as tapioca, and under that provision the substance involved in this case would be entitled to free admission. Attempting, as is our duty, to give effect to the statute in all its parts, we think the proper construction of these provisions is that under paragraph 323 a duty is laid upon starch, including all preparations, from whatever substance produced, fit for use as starch; and assuming that tapioca flour is, within that general description, fit for such use, yet by virtue of paragraph 730, tapioca is placed on the free list, and the substance tapioca flour, being tapioca in one of its forms, is excepted from the general language of paragraph 323, and is entitled to free entry.

It is so excepted, because although assuming it to be fit for use as starch, it is nevertheless tapioca, and tapioca is in so many words put on the free list. Effect is thus given to the general language of the paragraph concerning starch and all

Opinion of the Court.

preparations fit for use as such, excepting therefrom the one article specially named in paragraph 730, to which effect is given by allowing the exception.

This construction is in strict accordance with the rule that the designation of an article, *eo nomine*, either for duty or as exempt from duty, must prevail over words of a general description which might otherwise include the article specially designated. *Homer v. The Collector*, 1 Wall. 486; *Reiche v. Smythe*, 13 Wall. 162; *Movius v. Arthur*, 95 U. S. 144; *Arthur v. Lahey*, 96 U. S. 112; *Arthur v. Rheims*, 96 U. S. 143; *Chung Yune v. Kelly*, 14 Fed. Rep. 639, 643. The last case involves this particular substance.

It is urged, however, that the provision relating to the free list is that the articles named therein shall be exempt from duty "unless otherwise specially provided for in this act," (page 602, "free list,") and that tapioca flour is otherwise specially provided for in the act by paragraph 323. We cannot concur in this view. Tapioca flour is not otherwise specially provided for in paragraph 323. It is not mentioned specially nor is it named at all in that paragraph, which uses only general language relating to starch and all preparations from whatever substance produced, fit for use as starch. If tapioca flour be such a preparation it would be included in that general description if not otherwise exempted. But there is no special provision for tapioca flour, making that substance, in terms, dutiable under that paragraph, while in the free list there is a special designation of tapioca, and tapioca flour is tapioca, just as much as either of its other forms, "flake" or "pearl," is tapioca.

It would seem that the language at the beginning of the provision for the free list, that the following articles shall be exempt from duty, "unless otherwise specially provided for in this act," strengthened the argument that tapioca flour, being in fact tapioca in one of its well-known forms, was exempt from duty, because in order not to be exempt the article must be otherwise specially made dutiable. It is not so made dutiable, and is therefore by the clear provision of the act made free of duty. Being in truth tapioca, and com-

Opinion of the Court.

mercially known as such, it does not come under the description of starch, although in great part composed of that substance. The commercial designation of an article is the first and most important thing to be ascertained, and governs in the construction of the tariff law when that article is mentioned, unless there is something else in the law which restrains the operation of this rule. *Arthur v. Morrison*, 96 U. S. 108; *Arthur v. Lahey*, 96 U. S. 112; *Arthur v. Rheims* Id. 143; *Robertson v. Salomon*, 130 U. S. 412; *Bogle v. Magone*, 152 U. S. 623.

The case is not within the principle decided in *Magone v. Heller*, 150 U. S. 70. There the contest was between a clause of the tariff act of 1883, providing for a duty upon sulphate of potash, *eo nomine*, and a clause exempting from duty "all substances expressly used for manure." It was held that a kind of sulphate of potash, the only common use of which, either by itself or in combination with other materials, was for manure or in the manufacture thereof, was entitled to free entry, and was not subjected to duty as sulphate of potash. Whether the imported article was at the time of importation "expressly used for manure" in the sense defined in the opinion, was held to be a question of fact, and that the court below erred in denying the collector's request to submit the case to the jury and in directing a verdict for the importer. The term "expressly used for manure," it was said, was equivalent to "used expressly" or "particularly" or "especially" for manure, and if it were found as a fact that the article was so used, it was exempt from duty.

If the statute in this case had said that starch was dutiable, including all preparations from whatever substance produced, expressly intended and fit for use as starch, then tapioca flour, if fit and intended for such use, might be dutiable under the paragraph in question, and not be exempt as a form of tapioca. But when the language is, fit for use as starch, it is so much more general, that it is properly qualified by the subsequent paragraph which exempts tapioca, and consequently tapioca flour, one of its commercially known forms.

Thus far we have proceeded upon the assumption that tapi-

Opinion of the Court.

oca flour was a preparation fit for use as starch, and, therefore, dutiable under paragraph 323, unless excepted therefrom by paragraph 730; but we are of opinion that tapioca flour is not a preparation fit for such use within the meaning of the statute. The substance in question is not commercially known as starch, nor as any preparation fit for use as such. In the markets of the United States it is commercially known as tapioca flour, while the term "tapioca" includes precisely the same substance. Its use as starch for laundry purposes is limited to the Chinese on the Pacific coast.

It is not imported into San Francisco by any other than Chinese, nor is it manufactured in this country into the article commonly known as starch, nor is it to any extent used as a substitute therefor, although it is chemically a starch because a large part of it consists of a starchy substance.

Upon the finding and the proofs in this case we are of opinion that this article does not come within paragraph 323. We think the language of that paragraph means any preparation which is so far fit for use as starch as to be commonly used or known as such or as a substitute therefor. This substance does not come within that language as thus construed. The use of the article by the Chinese on the Pacific coast for laundry purposes is so infinitesimally small that it wholly fails to show that it is fit for that use within the meaning of the statute. The evidence in this case is that the attempt to use it for laundry purposes by white laundrymen in California gave such poor results that it was abandoned as a failure.

There is one finding by the Circuit Judge in this case in which it is said that the substance is used in the Eastern States *for starch purposes* by calico printers and carpet manufacturers to thicken colors; also for book binding and in the manufacture of paper; also for filling in painting, and in the manufacture of a substitute for gum arabic and other gums, sometimes for sizing cotton goods, and also as an adulterant in the manufacture of candy in some cases and in other articles. The expression in that finding, that the substance is used in the Eastern States *for starch purposes*, is an inadvertence, because the finding, although it rests upon the evi-

Opinion of the Court.

dence as well as upon the agreed statement of facts stipulated between the parties, yet there is nothing in the evidence or in the stipulation to show that the enumerated purposes were starch purposes. In the stipulation it is said that the substance in controversy *is used in the Eastern States by calico printers, etc.* The expression "for starch purposes" does not appear in the agreed statement of facts, and in naming the uses for which the substance is used it would appear that most of them are not what would be ordinarily understood as a starch purpose.

Sizing cotton goods might perhaps be regarded as somewhat of a starch purpose, as starch is sometimes used in that way. The evidence does not show that this use is general, and the expression, fit for use as starch, would not in our judgment include that use. We think it would not in the ordinary acceptation of the term be called a starch purpose. Glue would accomplish much the same purpose and might be used therefor. The use by calico printers and carpet manufacturers to thicken colors is not the ordinary use of starch, nor is it a starch purpose. Nor would its use as an adulterant in the manufacture of candy and other articles be properly described as such a purpose.

Assuming, as counsel for the government claims, and as is undoubtedly entirely true, that the policy shown in the tariff act is protection to American industries, yet the article here in controversy does not and cannot compete with American starch, for any of the purposes for which starch is commonly and ordinarily used in this country. The evidence to that effect, we think, is conclusive.

In *Chung Yune v. Kelly*, 14 Fed. Rep. 639, the Circuit Court for the District of Oregon submitted to the jury whether "the article in question," (which was in fact tapioca flour, though imported as sago flour,) "imported and entered by the defendant, is a starch known to commerce as such, and made and intended to be used primarily by laundrymen in the stiffening and polishing of clothes." The jury returned a negative answer, and the court said: "This answer is undoubtedly according to the law and the fact." The

Opinion of the Court.

substance was held to be exempt from duty under the tariff act, Rev. Stat. p. 488, as root flour, but the plaintiff was not allowed to recover back the duty which he had paid, because having claimed in his protest that the article was *sago* flour, the court felt compelled to confine him to his specific ground of protest, and consequently the government kept his money, although the importer had in fact imported an article entitled to free entry under the law.

The case of *Townsend v. United States*, 14 U. S. App. 413, holds that paragraph 323 of the tariff act of 1890 includes only those preparations which are actually and not theoretically fit for use as starch, and which can be practically used as such, and not those which can be made, by manufacture, fit for such use. Counsel for the government criticises that case as not decided upon the same amount of evidence that has been given in this case upon the question whether the article is or is not fit for use as starch. But in the opinion delivered in the case it is seen that, while not precisely identical, the facts are substantially the same as in the case at bar. The court says the article is used mostly by calico printers and carpet manufacturers to thicken colors and in the manufacture of a substance for gum arabic or other gums; also for the sizing of cotton goods, a purpose for which starch is also used to a certain extent, but the weight of the testimony was in the opinion of the court that it was not used for laundry purposes. We think the same facts appear in the case before us, the use for laundry purposes by a few Chinese on the Pacific coast not being sufficient in extent to enable us to say that it is so used in any but the most minute quantities. It seems to us clear from the finding and from the evidence that the substance is not commercially known by the people in this country as starch nor as adapted to the ordinary purposes of that article, and it has not been manufactured into commercial starch, and is not known and is not fit for use as such.

The Treasury Department has heretofore announced decisions which are entitled to much weight upon the question herein presented. Prior to the tariff act of July 14, 1870,

Opinion of the Court.

c. 255, 16 Stat. 256, 268, both starch and tapioca had been made dutiable, sometimes at the same and sometimes at different rates of duty. By the latter act "tapioca, cassava or cassady" were placed in the free list, while "root flour" was placed in the free list in 1872. (17 Stat. 236.) The Treasury Department held tapioca flour entitled to free entry as tapioca. The Secretary said: "It appears, upon investigation, that tapioca is prepared in three forms, namely, flake, pearl and flour, and that these terms do not indicate any substantial difference in the character or quality of the article, but merely indicate its form or appearance." Decisions, Treasury Department, 1887-1890, No. 3161, March 23, 1877.

Under the act of 1883, (22 Stat. 488, 521,) tapioca was continued in the free list, as was also root flour, (page 520,) while starch was made dutiable as potato or corn starch at a certain rate, "other starch two and one half cents per pound." Page 503. The Treasury Department held, July 7, 1883, that tapioca flour was to be admitted free of duty, without regard to the use for which it was ultimately intended, and that the provision in that act for a duty upon "other starch" than potato or corn starch did not cover tapioca flour. Decisions, Treasury Department, No. 5802.

Subsequently to that time various importations had been made of this article, upon which duties had been assessed at the rate of two and one-half cents per pound, as starch, although imported under various names as "sago, sago crude, sago flour, tapioca," etc.

Exemption had been claimed for these articles as coming under the provisions of the free list as "root flour, sago crude and sago flour," and "tapioca, cassava or cassady." The article had been classified by the collector under the tariff act as "other starch," for the reason that it was, as claimed, imported and was actually used as starch by the Chinese laundries throughout the States and Territories. The department, under date of January 11, 1887, again held that "flour made from tapioca, cassava or cassady root may be admitted free of duties, without regard to the use for which it is ultimately intended." Samples of the flour had been submitted to the

Opinion of the Court.

United States chemist, who reported that it was "chemically a starch, obtained from the root of *Janipha manihot* or *Jatropha manihot*," yet it was considered in its commercial character to be tapioca; it was so returned by the appraiser, and it was directed that the merchandise should be admitted free of duty. Decisions, Treasury Department, 1887-1890, No. 7971, January 11, 1887.

On September 21, 1888, certain so-called flour was imported which the importers claimed to be free of duty, and upon which the collector assessed a duty of two and one half cents per pound under the provisions of the act already mentioned, providing for such a duty on "other starch," etc. Samples of the merchandise in question were submitted to the United States chemist at the port of New York, who found the article to be tapioca starch, and under the department's decisions of July 7, 1883, and January 11, 1887, it was held that flour made from tapioca, although chemically a starch, was to be admitted free of duty under the provisions for tapioca, without regard to the use for which it was ultimately intended. The appeal was allowed, and the collector directed to reliquidate the entry and to take measures for refunding the duties exacted. Treasury Department Decisions, *supra*, No. 9031.

These decisions were principally based upon the provisions of the acts which related to tapioca, (one decision being exclusively upon the tapioca provision,) and although in some cases in which the question as to tapioca arose, the act also provided for the free entry of root flour, the decisions that tapioca flour was entitled to free entry were substantially founded upon the tapioca provision in the act and not upon the root flour item.

Subsequently, when Congress by the act of 1890 omitted root flour from the free list and imposed a duty upon starch and all preparations, from whatever substance produced, fit for use as starch, we do not think that any argument can be drawn therefrom in favor of the construction which would impose a duty on tapioca flour as a preparation fit for use as starch, while at the same time there is a clause in the act providing for free entry of tapioca, the substance tapioca flour being one of its forms. Many other flours might come under

Syllabus.

the denomination of root flour which were not specially declared in the act to be free from duty, and the dropping of the root flour from the free list might relegate such flour to the dutiable list. Not so as to tapioca flour which is still found in the free list. The omission of root flour from the free list, therefore, had no effect upon tapioca flour, and if there had been an intention to include it in the dutiable list, especially after these repeated decisions of the Treasury that it was entitled to free admission as tapioca, we cannot but believe that Congress would have expressed that intention with reasonable clearness.

The judgment of the Circuit Court of Appeals of the Ninth Circuit should be reversed, and that of the Circuit Court for the Northern District of California affirmed, and the case remanded to that court with such directions, and it is so ordered.